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Transcript of September 20, 2024, Temporary Restraining Order Hearing

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION, : CIVIL CASE NUMBER
PLAINTIFF :
 :
VERSUS : 24-CV-4949
 :
EMPIRE HOLDINGS GROUP, LLC, :
ET AL, :
DEFENDANTS :

SEPTEMBER 20, 2024
COURTROOM 10B
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE WENDY BEETLESTONE, J.

TEMPORARY RESTRAINING ORDER HEARING

APPEARANCES:

RYAN ADAM MCAULIFFE, ESQUIRE
AMANDA GRIER, ESQUIRE
FEDERAL TRADE COMMISSION
DIVISION OF MARKETING PRACTICES
600 PENNSYLVANIA AVE, NW
MAILSTOP CC-8543
WASHINGTON, DC 20580

COUNSEL FOR THE PLAINTIFF

LYNN GLIGOR, RMR
OFFICIAL COURT REPORTER
ROOM 2609 U. S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106
(856) 649-4774

PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 CONTINUED APPEARANCES:

2 CLAIR E. WISCHUSEN, ESQUIRE
3 GORDON & REES
4 277 S. WASHINGTON ST., SUITE 550
5 ALEXANDRIA, VA 22314

6 COUNSEL FOR THE DEFENDANT

7 STEPHEN R. FREELAND, ESQUIRE
8 KELLEY DRYE & WARREN LLP
9 3050 K STREET NW, SUITE 400
10 WASHINGTON, D.C. 20007

11 COUNSEL FOR THE DEFENDANT

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1 (CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING. HAVE A SEAT.

3 THIS IS THE MATTER OF FEDERAL TRADE

4 COMMISSION VERSUS EMPIRE HOLDINGS GROUP, LLC.

5 CAN I HAVE INTRODUCTIONS FROM PLAINTIFFS

6 COUNSEL.

7 MS. GRIER: YES, YOUR HONOR. MY NAME IS

8 AMANDA GRIER, I AM REPRESENTING THE FTC.

9 MR. MCAULIFFE: YES, YOUR HONOR. MY NAME

10 IS RYAN MCAULIFFE AND I AM REPRESENTING THE FEDERAL

11 TRADE COMMISSION AS WELL.

12 THE COURT: LET'S HEAR FROM DEFENSE.

13 MR. FREELAND: GOOD MORNING, YOUR HONOR,

14 STEPHEN FREELAND OF GORDON REES ON BEHALF OF THE

15 DEFENDANTS. NEXT TO ME IS ONE OF THE INDIVIDUAL

16 DEFENDANTS, MR. PRUSINOWSKI.

17 THE COURT: OKAY.

18 MR. FREELAND: AND ALSO WITH ME ARE MY

19 PARTNERS RYAN POTEET AND CLAIR WISCHUSEN.

20 THE COURT: OKAY. SO WHAT I AM GOING TO

21 DO HERE IS REALLY TRY AND FOCUS IN ON THE THINGS THAT

22 ARE AT ISSUE RATHER THAN THE THINGS THAT ARE NOT AT

23 ISSUE. SO I'M GOING TO GO THROUGH WHO THE PARTIES ARE

24 -- THIS IS FOR THE RECORD, BECAUSE WE ARE ON THE TRO --

25 WHO THE PARTIES ARE, WHAT THE JURISDICTION IS, THE

1 ELEMENTS OF THE TRO IN THE FTC CONTEXT. AND THEN WE ARE
2 GOING TO HAVE A DISCUSSION ABOUT AMG, JUST SO THAT WE
3 CAN GET CLARITY ON THAT. AND THEN WE ARE GOING FROM
4 THERE, BECAUSE I THINK AT THAT POINT IT'S A CLASSIC,
5 JUST DECIDE THESE ISSUES.

6 SO THE FEDERAL TRADE COMMISSION HAS FILED
7 SUIT AGAINST EMPIRE HOLDING GROUPS, LLC, EEB AND PETER
8 -- IS IT PRUSINOWSKI?

9 MR. FREELAND: PRUSINOWSKI, YOUR HONOR.

10 THE COURT: PRUSINOWSKI. I WILL PROBABLY
11 SAY IT WRONG AT SOME POINT, BUT PRUSINOWSKI.

12 -- ASSERTING VIOLATIONS OF SECTION 5(A)
13 OF THE FTC ACT, WHICH IS 15 U.S.C. 45(A); THE BUSINESS
14 OPPORTUNITY RULE, WHICH IS 16 CFR PART 437; AND THE
15 CONSUMER REVIEW FAIRNESS ACT, 15 U.S.C. SECTION 45(B).

16 THE FTC NOW SEEKS AN EMERGENCY TEMPORARY
17 RESTRAINING ORDER PURSUANT TO ITS AUTHORITY UNDER
18 SECTIONS 13(B) AND 19 OF THE FTC ACT, WHICH IS 15 U.S.C.
19 53(B) AND 15 U.S.C. 57(B)(B) RESPECTFULLY.

20 THE FTC REQUESTS THAT THE COURT ENJOIN
21 THE DEFENDANTS' ALLEGED ILLEGAL PRACTICES AND ORDER
22 THAT -- ORDER AN ASSET FREEZE, BE APPOINTED A TEMPORARY
23 RECEIVER, IMMEDIATE ACCESS TO DEFENDANT'S BUSINESS
24 PREMISES, TURN OVER BUSINESS RECORDS, LIMITED DISCOVERY
25 AND AN ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION

1 SHOULD NOT ISSUE.

2 SPECIFICALLY, THE CLAIMS BROUGHT ARE
3 SECTION 5(A) OF THE FTC ACT, 15 U.S.C. 45(A) FALSE
4 ADVERTISING, BUSINESS OPPORTUNITY RULE 16 CFR PART 537
5 DISCLOSURE AND CONSUMER REVIEW FAIRNESS ACT, 15 U.S.C.
6 45(B) ILLEGAL CONTRACT.

7 FOR SUBJECT MATTER JURISDICTION, THE
8 COURT HAS FEDERAL QUESTION JURISDICTION UNDER 28 U.S.C.
9 1331 BECAUSE THE FTC IS BRINGING THIS CLAIM PURSUANT TO
10 FEDERAL STATUTE AND RULE.

11 DO THE PARTIES AGREE THAT I HAVE SUBJECT
12 MATTER JURISDICTION?

13 MR. FREELAND: YES, YOUR HONOR.

14 MS. GRIER: YES, YOUR HONOR.

15 THE COURT: AND WITH RESPECT TO PERSONAL
16 JURISDICTION, THE COURT HAS JURISDICTION OVER EEB
17 BECAUSE ITS PRINCIPLE PLACE OF BUSINESS IS IN
18 PENNSYLVANIA. THE COURT WOULD LIKELY HAVE JURISDICTION
19 OVER THE INDIVIDUAL DEFENDANT BECAUSE HE IS THE C.E.O.
20 AND SOLE OWNER OF EEB.

21 DO THE PARTIES AGREE THAT I HAVE PERSONAL
22 JURISDICTION?

23 MR. FREELAND: YES, YOUR HONOR.

24 MS. GRIER: YES, YOUR HONOR.

25 THE COURT: OKAY. NOW WE ARE GOING TO

1 LOOK TO THE ELEMENTS OF A TRO. USUALLY TROS AND
2 PRELIMINARY INJUNCTIONS ARE SUBJECT TO THE TRADITIONAL
3 FOUR-PART TEST. HOWEVER, WHEN THE FTC SEEKS A TRO
4 PURSUANT TO 13(B), THE STANDARD IS DIFFERENT. IN THOSE
5 CASES, THE QUESTIONS OF PRELIMINARY INJUNCTIVE RELIEF IS
6 RESOLVED BY WEIGHING THE EQUITIES AND CONSIDERING THE
7 COMMISSION'S LIKELIHOOD OF ULTIMATE SUCCESS TO DETERMINE
8 WHETHER SUCH ACTION WOULD BE IN THE PUBLIC INTEREST.
9 AND THAT IS FEDERAL TRADE COMMISSION VERSUS PENN STATE
10 HERSHEY MEDICAL CENTER, 914 F.3RD 193, 197, THAT'S A 3RD
11 CIRCUIT, 2019.

12 SO THE FTC DOES NOT NEED TO PROVE
13 IRREPARABLE HARM. I CAN SEE THAT IN THE CASE I JUST
14 CITED AS WELL AS FTC VERSUS WORLDWIDE FACTORS LIMITED,
15 WHICH IS A 9TH CIRCUIT CASE, 882 F.2ND 344, PINPOINT
16 CITES 346 TO 47.

17 ADDITIONALLY, THE PUBLIC INTEREST
18 STANDARD IN SECTION 3(B) DIFFERS FROM -- 13(B), RATHER,
19 DIFFERS FROM THE TRADITIONAL EQUITY STANDARD FOR
20 INJUNCTIVE RELIEF. THIS ASSESSMENT ALIGNS WITH THE
21 JUDGEMENT OF OTHER COURT OF APPEALS WHICH HAVE CONCLUDED
22 THAT THE SECTION 13(B) STANDARD IS NOT ONLY DIFFERENT
23 FROM BUT EASIER TO SATISFY THAN THE TRADITIONAL
24 STANDARDS FOR INJUNCTIVE RELIEF. AND THAT IS PENN STATE
25 HERSHEY MEDICAL CENTER AT 197.

1 BECAUSE THE BALANCE IS FOCUSED ON THE
2 PUBLIC INTEREST FACTORS, THE PUBLIC INTEREST SHOULD
3 RECEIVE GREATER WEIGHT THAN PRIVATE ONES. AND THAT IS
4 THE WORLDWIDE FACTORS CASE AT 346 TO 47.

5 DO THE PARTIES AGREE THAT THAT IS, IN
6 FACT, THIS CORRECT STANDARD FOR A TRO IN THIS CONTEXT?

7 MS. GRIER: YES, YOUR HONOR.

8 MR. FREELAND: YES, YOUR HONOR.

9 THE COURT: NOW WE ARE GOING TO GO TO
10 AMG.

11 AS I UNDERSTAND IT, THE DEFENDANTS ARE
12 ARGUING THAT A TRO IS INAPPROPRIATE IN THIS CONTEXT
13 BECAUSE OF AMG. AND THAT IS AMG CAPITAL MANAGEMENT, LLC
14 VERSUS FTC, 593 U.S. 67, PINPOINT 82, WHICH IS A 2021
15 CASE. AND THEY CITE TO THAT CASE FOR THE PROPOSITION
16 THAT SECTION 5 DOES NOT RUN THE COMMISSION AUTHORITY TO
17 OBTAIN EQUITABLE MONETARY RELIEF.

18 I UNDERSTAND THE FTC TO BE ARGUING THAT
19 THAT AMG IS, IN FACT, A LIMITED CASE AND THEREFORE, DOES
20 NOT PROHIBIT THE REQUEST THAT THEY ARE MAKING.

21 I THINK GIVEN THAT IT IS GOVERNMENT'S
22 BURDEN, I AM GOING TO TURN FIRST TO THE GOVERNMENT TO
23 TELL ME WHAT THEY THINK ABOUT AMG.

24 MS. GRIER: YES, YOUR HONOR.

25 WE ARE FILING UNDER SECTION 13(B) AND

1 SECTION 19, AND THE AMG CASE WAS CONCERNING ITSELF WITH
2 SECTION 13(B) RELIEF. SO WE ARE ALSO ASKING FOR
3 INJUNCTIVE RELIEF UNDER 13(B) WITH A MONETARY RELIEF,
4 AND OTHER PROSPECTIVE RELIEF IS UNDER SECTION 19.

5 SO IN AMG, THE SUPREME COURT DID NOT
6 FORECLOSE THE ABILITY OF THE FTC TO BRING ACTIONS UNDER
7 SECTION 19. AND THERE HAVE BEEN MANY CASES SINCE AMG IN
8 WHICH THE FTC HAS BROUGHT SUCCESSFULLY BOTH IN A TRO AND
9 P.I. SETTING AND OTHER LITIGATION WHERE WE PLEAD SECTION
10 19 AND WE ASK FOR MONETARY EQUITABLE RELIEF, AND THAT
11 HAS BEEN GRANTED BY COURTS.

12 THE COURT: ARE YOU MAINTAINING THAT YOU
13 ARE ASKING FOR MONETARY EQUITABLE RELIEF AT THIS POINT
14 IN THE TRO?

15 MS. GRIER: WE ARE ASKING FOR AN ASSET
16 FREEZE AND A RECEIVERSHIP, AND ALSO WE ARE ASKING FOR
17 PRELIMINARY INJUNCTION. SO OUR CASE AT ITS -- AT THE
18 RELIEF STAGE IS DEFINITELY FOR MONETARY RELIEF UNDER
19 SECTION 19 AS WELL AS INJUNCTIVE RELIEF.

20 SO WE ARE ASKING FOR -- FOR THE PURPOSES
21 OF TODAY, WE ARE ASKING FOR TEMPORARY INJUNCTIVE RELIEF,
22 WE ARE ASKING FOR TEMPORARY ASSET FREEZE, WE ARE ASKING
23 FOR A TEMPORARY RECEIVER AND WE ARE ASKING FOR OTHER
24 EQUITABLE RELIEF AS WELL.

25 THE COURT: OKAY, BUT I DON'T THINK YOU

1 ANSWERED MY QUESTION DIRECTLY.

2 IS IT YOUR VIEW -- OR WELL, SO IF I LOOK
3 AT WHAT YOU ARE ASKING FOR, YOU ARE ASKING FOR -- LET'S
4 START WITH THE EASY ONES. LIMITED DISCOVERY. THAT IS
5 NOT MONETARY RELIEF, CORRECT?

6 MS. GRIER: NO, YOUR HONOR.

7 THE COURT: AND THEN YOU ARE ASKING FOR
8 AN ORDER TO SHOW CAUSE BY A PRELIMINARY INJUNCTION
9 SHOULD NOT ISSUE.

10 THAT IS NOT MONETARY RELIEF, CORRECT?

11 MS. GRIER: NO, YOUR HONOR.

12 THE COURT: AND YOU ARE ASKING THEM TO
13 TURN OVER BUSINESS RECORDS. THAT IS NOT MONETARY
14 RELIEF, CORRECT?

15 MS. GRIER: NO, YOUR HONOR.

16 THE COURT: AND THEN YOU ARE ASKING FOR
17 IMMEDIATE ACCESS TO DEFENDANT'S BUSINESS PREMISES. THAT
18 IS NOT MONETARY RELIEF, CORRECT?

19 MS. GRIER: NO.

20 THE COURT: AND YOU ARE ALSO ASKING FOR
21 THE APPOINTMENT OF A TEMPORARY RECEIVER. IS IT YOUR
22 VIEWPOINT THAT THAT IS ASKING FOR MONETARY RELIEF?

23 MS. GRIER: NO, YOUR HONOR.

24 THE COURT: AND THEN WHAT ABOUT ASSET
25 FREEZE, IS IT YOUR VIEW THAT THAT IS ASKING FOR MONETARY

1 RELIEF?

2 MS. GRIER: IT'S MY VIEW THAT AN ASSET
3 FREEZE IS APPROPRIATE IN A CASE IN ORDER TO PRESERVE THE
4 POSSIBILITY OF CONSUMER REDRESS. AND IN ORDER TO HAVE
5 CONSUMER REDRESS, YOU HAVE TO HAVE EQUITABLE MONETARY
6 RELIEF IN ORDER TO REDRESS CONSUMERS.

7 THE COURT: RIGHT. BUT LET'S JUST REALLY
8 FOCUS ON WHAT WE ARE DOING RIGHT NOW. BECAUSE I
9 UNDERSTAND WHERE YOU WANT TO GO IN THE FUTURE, BUT WE
10 ARE TALKING ABOUT RIGHT NOW, A TRO. AND THIS ISN'T AMG
11 WHERE YOU WENT THROUGH A WHOLE PROCESS AND THERE WAS A
12 SUMMARY JUDGMENT MOTION AND THEN THE COURT ORDERED THE
13 ONE POINT WHATEVER IT IS BILLION TO BE DISGORGED AND
14 PAID TO SOME OF THOSE WHO HAVE BEEN HARMED. YOU ARE NOT
15 ASKING FOR THAT. YOU ARE JUST SAYING STOP THINGS WHERE
16 THEY ARE, KEEP THE STATUS QUO WHERE IT IS.

17 SO REGARDLESS OF WHAT YOU MAY BE ASKING
18 FOR IN THE FUTURE, RIGHT NOW, AS I UNDERSTAND -- YOU
19 TELL ME, AND I AM GOING TO ASK YOU, DEFENSE, WHAT YOU
20 THINK ABOUT THIS. AN ASSET FREEZE DOES NOT IMMEDIATELY
21 COME TO MY MIND WHEN I THINK OF RESTITUTION OR
22 DISGORGEMENT.

23 MS. GRIER: YOU ARE CORRECT, YOUR HONOR.
24 THE PURPOSE OF THE ASSET FREEZE IS TO MAINTAIN THE
25 STATUS QUO TEMPORARILY.

1 THE COURT: SO EVEN IF -- LET'S ASSUME
2 FOR NOW -- AND AGAIN, DEFENSE HAVE WILL THEIR
3 OPPORTUNITY TO ADDRESS THESE POINTS.

4 EVEN IF DEFENSE IS RIGHT AND YOU CAN'T
5 GET AN ASSET FREEZE UNDER SECTION 5 -- BUT I SUPPOSE YOU
6 COULD IF YOU GOT A CEASE AND DESIST LETTER FIRST UNDER
7 SECTION 19, CORRECT? CORRECT?

8 MS. GRIER: UNDER SECTION 19, WE ARE ABLE
9 TO REQUEST AN ASSET FREEZE, A TEMPORARY ASSET FREEZE AT
10 THIS STAGE, YES.

11 THE COURT: ONLY AFTER YOU HAVE GOT A
12 CEASE AND DESIST LETTER, RIGHT?

13 MR. MCAULIFFE: FOR THE SECTION 5
14 VIOLATIONS.

15 THE COURT: YES. THAT'S WHAT I'M TALKING
16 ABOUT.

17 MS. GRIER: YES, SORRY.

18 THE COURT: SO I AM JUST TRYING TO GET
19 THE TAXONOMY IN PLACE SO WE ALL KNOW WHAT WE ARE TALKING
20 ABOUT.

21 SO SECTION 5 OF THE FTC, FALSE
22 ADVERTISING CLAIMS, YOU COULD GET ENFORCE -- MONETARY
23 RELIEF UNDER 19(A) -- RATHER 19 ONLY AFTER A CEASE AND
24 DESIST LETTER. UNDER THE BUSINESS OPPORTUNITY RULE, YOU
25 COULD GET MONETARY RELIEF, RIGHT? AND YOU DON'T NEED A

1 CEASE AND DESIST LETTER AND THE SAME UNDER CRFA, WHICH
2 IS THE ILLEGAL CONTRACT CLAIMS, RIGHT?

3 MS. GRIER: THAT'S CORRECT, YOUR HONOR.

4 THE COURT: NOW WE ARE GOING TO TURN TO
5 DEFENDANT, AND THERE ARE VARIOUS THINGS THAT I HAVE
6 STATED EITHER BECAUSE IT SEEMS TO ME THAT THEY ARE THAT
7 WAY OR BECAUSE PLAINTIFFS HAVE TOLD ME THAT THEY ARE
8 THAT WAY. SO I WANT YOU TO DRILL DOWN ON THOSE THINGS
9 AND TELL ME WHAT YOU THINK.

10 MR. FREELAND: I WILL DO MY BEST, YOUR
11 HONOR. I AM ADMITTEDLY EXHAUSTED, AND MY BRAIN IS MUSH.
12 BUT I CERTAINLY WILL TRY MY BEST.

13 THE COURT: WHY DON'T WE JUST START OFF
14 WITH AMG AND TELL ME WHAT YOU THINK THE SCOPE OF AMG IS.

15 MR. FREELAND: SO I THINK YOUR HONOR'S
16 QUESTIONS HIT ON THE APPROPRIATE POINTS, AND I WOULD
17 LIKE TO SORT OF -- I WOULD LIKE TO GIVE THE KISS
18 PRINCIPLES WHEN IT COMES TO THESE THINGS. FOR SECTION 5
19 UNDER AMG IF THERE IS NO CEASE AND DESIST, THEY CAN GET
20 CONDUCT INJUNCTIVE RELIEF. AND YOUR HONOR, I THINK THIS
21 WAS IN OUR PAPER, I APOLOGIZE AGAIN. WE HAVE TOLD THE
22 FTC, WE EVEN STIPULATED, TO A CONDUCT INJUNCTION THAT
23 WOULD REQUIRE THE DEFENDANT TO COMPLY WITH SECTION 5.
24 SECTION 5, HOWEVER, AT THIS JUNCTURE CANNOT BE THE
25 VEHICLE FOR AN ASSET FREEZE BECAUSE THE ONLY WAY THE FTC

1 GETS MONEY HERE FOR CONSUMERS IS THROUGH SECTION 19.
2 AND AS WE SPELL OUT IN OUR PAPER FILED EARLIER THIS
3 MORNING, THAT REQUIRES THEM TO SHOW A LIKELIHOOD OF
4 SUCCESS ON THE MERITS UNDER THE BUSINESS OPPORTUNITY
5 RULE. SO THE WAY I SEE IT IS SECTION 5, NO CEASE AND
6 DESIST LETTER, INJUNCTION ONLY, CONDUCT ONLY, NO MONEY.

7 SECTION 19, LIKELIHOOD OF SUCCESS ON THE
8 MERITS, THEN POTENTIALLY IF THE EQUITIES ARE THERE, YOU
9 MIGHT BE ABLE TO OBTAIN AN ASSET FREEZE BECAUSE THE ONLY
10 PURPOSE FOR THE ASSET FREEZE -- AND IT'S ALL OVER THEIR
11 MOTION, YOUR HONOR -- IS FOR CONSUMERS REDRESS, I.E.
12 DAMAGES.

13 THE COURT: AND YOU WOULD SAY THE SAME
14 FOR THE CRFA, THE ILLEGAL CONTRACT CLAIMS.

15 MR. FREELAND: CORRECT, YOUR HONOR, WITH
16 ONE CAVEAT. ON THE CFRA CLAIM, BECAUSE IT HAPPENS --
17 IT'S NOT THE MAIN DRIVE OF THIS CASE. THE MAIN DRIVE OF
18 THIS CASE IN TERMS OF THE FTC'S ALLEGATIONS -- BY THE
19 WAY, YOUR HONOR, I FORGOT THIS. IS IT OKAY IF WE STAY
20 SEATED?

21 THE COURT: GENERALLY YOU WOULD STAND,
22 BUT GIVEN THE FACT THAT YOU HAVE BEEN ON THE TRAIN AND
23 BEEN UP EARLY AND NOT HAD ANY SLEEP, IF YOU REALLY WANT
24 TO SIT DOWN YOU MAY.

25 MR. FREELAND: I AM HAPPY TO STAND TO

1 KEEP THE BLOOD FLOWING.

2 ON THE CRFA CLAIM, YOUR HONOR, THERE'S A
3 STATUTE THAT WE AGREE PROHIBITS A FORM CONTRACT SIGNED
4 BY -- IT'S BASICALLY A CONTRACT OF ADHESION THAT IS
5 SIGNED BY CONSUMERS THAT HAS LANGUAGE IN IT THAT
6 PROHIBITS THE CONSUMER FROM POSTING NEGATIVE REVIEWS,
7 SAYING DISPARAGING THINGS. THE ONE IN THIS CASE WAS
8 MUTUAL, BUT THAT'S AN ASIDE.

9 ON THAT CLAIM, HOWEVER, YOUR HONOR,
10 THAT'S NOT THE CAUSE OF THE ALLEGED \$14 MILLION IN
11 CONSUMER DAMAGE IN THIS CASE. ALL OVER THE FTC'S
12 COMPLAINT, ALL OVER THEIR MOTION PAPER, IT'S THE
13 EARNINGS CLAIMS, THE EARNINGS CLAIMS, THE EARNINGS
14 CLAIMS, THE BUSINESS OPPORTUNITY. IT'S NOT THE FACT
15 THAT AT THE TIME OF PURCHASE SOMEONE SIGNED A CONTRACT
16 WITH A NON-DISPARAGING CLAUSE IN IT. SO WE DON'T
17 BELIEVE THAT THE CFRA CAN BE USED AS A VEHICLE FOR AN
18 ASSET FREEZE FOR THAT REASON.

19 THE COURT: OKAY. I THINK WHAT I NEED
20 FROM YOU IS -- WELL, LET'S DO IT IN A MUCH MORE RIGOROUS
21 FASHION, AND I WILL DO WHAT I DID WITH THE PLAINTIFFS
22 HERE.

23 REGARDLESS OF THE WAY I COME OUT ON AMG,
24 YOU ARE NOT SAYING THAT IT PROHIBITS AN ORDER TO SHOW
25 CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE.

1 MR. FREELAND: THE DEVIL'S IN THE
2 DETAILS, YOUR HONOR, BUT YES.

3 THE COURT: THE SHOW CAUSE WOULD BE SHOW
4 CAUSE IN 20 DAYS' TIME, THAT A PRELIMINARY INJUNCTION
5 SHOULD ISSUE. THAT WOULD BE THE ORDER. THERE WOULDN'T
6 BE ANY DETAILS, IT WOULD JUST BE SHOW CAUSE. I'M NOT
7 DOING THAT UNDER AMG, WHATEVER READING YOU HAVE IT ON.

8 MR. FREELAND: YOU ARE NOT, YOUR HONOR.

9 THE COURT: WHAT ABOUT LIMITED DISCOVERY?
10 THAT'S THE SAME THING, RIGHT?

11 MR. FREELAND: CORRECT, YOUR HONOR.

12 THE COURT: WHAT ABOUT TURNOVER OF
13 BUSINESS RECORDS? THERE MAY BE SOME OTHER REASONS WHY
14 YOU MAY NOT WANT THAT, BUT UNDER THIS ARGUMENT WE ARE
15 MAKING RIGHT NOW, AMG, UNDER -- ANY READING OF AMG DOES
16 NOT PROHIBIT THE TURN OVER OF BUSINESS RECORDS, CORRECT?

17 MR. FREELAND: THAT'S CORRECT, YOUR
18 HONOR.

19 THE COURT: AND WITH THE SAME CAVEATS,
20 IMMEDIATE ACCESS TO DEFENDANT'S BUSINESS PREMISES,
21 UNDERSTANDING THAT YOU MIGHT NOT WANT THAT, BUT IN TERMS
22 OF JUST THE AMG ARGUMENT WE ARE HAVING RIGHT NOW.

23 MR. FREELAND: THAT'S CORRECT, YOUR
24 HONOR.

25 THE COURT: AND AGAIN, THE APPOINTMENT OF

1 A TEMPORARY RECEIVER, SAME THING?

2 MR. FREELAND: SAME CAVEATS? YES, YOUR
3 HONOR.

4 THE COURT: OKAY. SO ESSENTIALLY WE ARE
5 ALL TALKING ABOUT THE ASSET FREEZE. AND I THINK WHAT
6 THEY ARE SAYING IS THAT THE ASSET FREEZE IS OKAY BECAUSE
7 AMG DOES NOT GET TO IT. AND YOU ARE SAYING, BUT LOOK AT
8 WHAT THEY REALLY WANT, WHICH IS AN ASSET FREEZE SO THAT
9 THEY CAN GIVE THE MONEY TO THE CONSUMERS.

10 MR. FREELAND: THAT'S CORRECT, YOUR
11 HONOR.

12 THE COURT: AND I THINK THERE IS A
13 DISTINCTION BETWEEN PERMANENT INJUNCTION AND A TRO. SO
14 IF THERE WAS A TRO WHICH CLEARLY INDICATED THAT THE ONLY
15 TRO -- AND AGAIN, I'M NOT SAYING I AM GOING TO ISSUE
16 ONE. I'M TRYING TO CLARIFY DAMAGES HERE, OR INJUNCTIVE
17 RELIEF, RATHER.

18 THE ONLY TRO WAS FREEZE ASSETS AND
19 NOTHING ELSE WITH NO UNDERSTANDING AT THIS POINT,
20 ANYWAY, THAT THE FROZEN ASSETS WOULD BE USED TO PAY OFF
21 CONSUMERS. YOU WOULD THEORETICALLY HAVE NO PROBLEM WITH
22 IT?

23 MR. FREELAND: WELL, I WOULD, YOUR HONOR,
24 BECAUSE I DON'T KNOW WHAT THE OTHER PURPOSE WOULD BE TO
25 FREEZE THE ASSETS.

1 THE COURT: OKAY. LET'S GO TO FTC FOR
2 THAT.

3 WHAT WOULD THE PURPOSE OF FREEZING THE
4 ASSETS APART FROM MAKING SURE THERE IS MONEY TO PAY OFF
5 DEFRAUDED CONSUMERS?

6 MS. GRIER: YOUR HONOR, THAT'S THE
7 PRIMARY PURPOSE IS TO PRESERVE THE POSSIBILITY OF
8 CONSUMER REDRESS AND TO ENSURE THAT ASSETS ARE NOT
9 DISSIPATED OR THAT THEY ARE NOT HIDDEN OR THAT THEY ARE
10 NOT SECRETED AWAY. IT'S ALSO TO ENSURE THAT THEY CAN
11 ALL BE LOCATED. THAT'S THE PRIMARY PURPOSE OF AN ASSET
12 FREEZE.

13 THE COURT: OKAY. WELL, YOU HAVE GIVEN
14 ME ENSURE THAT ASSETS CAN BE LOCATED, RIGHT, THAT'S ONE.

15 MS. GRIER: THAT'S CORRECT.

16 THE COURT: WHAT WAS THE OTHER ONE?

17 MS. GRIER: PRESERVE THE POSSIBILITY OF
18 REDRESS TO CONSUMERS, THAT THERE IS MONEY AVAILABLE AT
19 THE -- DURING THE PENDENCY OF THE TRO THAT WOULD BE
20 AVAILABLE TO CONSUMERS WHO HAVE BEEN HARMED.

21 THE COURT: OKAY. AND ANYTHING ELSE?

22 MS. GRIER: AN ASSET FREEZE ALSO SERVES
23 TO ENSURE THAT THE NUMBER OF ASSETS THAT ARE AVAILABLE
24 ARE, YOU KNOW, MAINTAINED AND THERE IS A STATUS QUO.

25 THE COURT: MAINTAINING THE STATUS QUO.

1 MS. GRIER: MAINTAINING THE STATUS QUO.

2 THE COURT: SO IF MY TRO, ASSUMING YOU
3 ARE ABLE TO PROVE WHAT YOU NEED TO PROVE, SPECIFICALLY
4 STATED THE ASSET FREEZE IS, ONE, TO ENSURE THAT THE
5 ASSETS CAN BE LOCATED AND, TWO, TO MAINTAIN THE STATUS
6 QUO AND THERE IS NO REFERENCE IN THE TRO TO PRESENT THE
7 POSSIBILITY OF REDRESS, WOULD THAT BE SOMETHING THAT YOU
8 WOULD BE -- GIVEN DEFENSE POSITION, WOULD THAT BE
9 SOMETHING THAT WOULD BE -- YOU WOULD BE AMENABLE TO?
10 UNDERSTANDING YOU DON'T KNOW HOW I AM GOING TO RULE
11 RIGHT NOW.

12 MS. GRIER: RIGHT. YOUR HONOR, THE ASSET
13 FREEZE IS TO PRESERVE THE STATUS QUO. SO IF THERE WAS A
14 TRO IN PLACE THAT PRESERVED THE STATUS QUO AND IMPOSED
15 AN ASSET FREEZE, THE FTC WOULD BE SATISFIED WITH THAT.

16 THE COURT: SO LET ME TURN TO DEFENSE.

17 MR. FREELAND, WHY WOULDN'T THAT BE OKAY
18 GIVEN YOUR UNDERSTANDING OF AMG?

19 MR. FREELAND: WELL, BECAUSE WE DON'T
20 BELIEVE THEY CAN SATISFY THE LIKELIHOOD OF SUCCESS ON
21 THE MERITS.

22 THE COURT: I AM PUTTING THAT ASIDE. I
23 AM JUST TRYING TO DRAW THE LINES HERE WITH RESPECT TO
24 THE INJUNCTIVE RELIEF THEY REQUEST.

25 ALL WE ARE TALKING ABOUT IS EVERYONE HAS

1 SAID I COULD DO ALL OF THE OTHER STUFF. I AM NOT SAYING
2 THAT I'M GOING TO, BUT I COULD DO IT WITHIN THE
3 FRAMEWORK THAT THEY WERE OPERATING. THERE WAS SOME
4 DISPUTE ABOUT THE ASSET FREEZE. BUT GIVEN THAT IF YOUR
5 VIEW OF AMG IS RIGHT, RESERVING THE POSSIBILITY OF
6 REDRESS MAY BE PROBLEMATIC, BUT LOOK, ENSURING THAT THE
7 ASSETS CAN BE LOCATED IS NOT PROBLEMATIC, NEITHER IS
8 MAINTAINING THE STATUS QUO PROBLEMATIC.

9 SO GIVEN THAT, WOULD YOU STILL MAINTAIN
10 THAT I CANNOT FREEZE THE ASSETS UNDER -- IF THE ORDER
11 SPECIFICALLY SAID, MAINTAINING STATUS QUO AND ENSURING
12 THAT THE ASSET CAN BE LOCATED?

13 MR. FREELAND: WOULD THE "MAINTAIN THE
14 STATUS QUO" BE THE ASSET FREEZE ITSELF?

15 THE COURT: YES.

16 MR. FREELAND: SO I DON'T THINK THAT THAT
17 IS AUTHORIZED UNDER AMG.

18 THE COURT: OKAY. SO YOU THINK THAT I
19 CAN'T DO IT, EVEN IF I SPECIFICALLY SAY IT'S ABOUT
20 MAINTAINING THE STATUS QUO?

21 MR. FREELAND: CORRECT. AGAIN, YOUR
22 HONOR, COMING BACK TO THE POINT THAT IF THE PURPOSE OF
23 THE FROZEN ASSETS IS REDRESS TO CONSUMERS, THE VEHICLE
24 FOR THAT HAS TO BE SECTION 19.

25 THE COURT: I MEAN, I AM SAYING -- I AM

1 ASKING YOU TO -- YOU ARE BUCKING THE HYPOTHETICAL. YOU
2 ARE BUCKING THE HYPOTHETICAL. BECAUSE I AM SAYING THAT
3 I WOULD NOT INCLUDE -- PRESERVING THE POSSIBILITY OF
4 REDRESS, I AM PUTTING IT ASIDE. I AM SAYING WE HAVE GOT
5 A SITUATION HERE, WE HAVE GOT A TRO HERE. WE DON'T KNOW
6 WHETHER THEY ARE GOING TO PROVE WHAT THEY NEED TO PROVE.
7 BUT IF THEY DO, THEN I HAVE TO CONSIDER THIS ASSET
8 FREEZE QUESTION, AND WE HAVE TALKED ABOUT THREE POSSIBLE
9 BUCKETS OR THREE REASONS FOR THE ASSET FREEZE. ONE IS
10 MAINTAINING THE STATUS QUO. I CAN ABSOLUTELY DO THAT.
11 THAT HAS GOT NOTHING TO DO WITH MONEY, THAT'S JUST
12 MAINTAINING THE STATUS QUO. THAT'S WHAT I DO IN A TRO,
13 RIGHT. THEN ENSURING THAT THE ASSETS CAN BE LOCATED.
14 THERE'S PLENTY OF -- I DON'T KNOW WHETHER THERE IS
15 OPINIONS TALKING ABOUT THAT, BUT THERE IS A LOT OF
16 ORDERS, RIGHT. SO ORDERS ARE ORDERS. IT SUGGESTS THAT
17 THERE'S A LOT OF JUDGES JUST NOT DOING WHAT I AM DOING
18 NOW, PUTTING YOU THROUGH YOUR PACES, BUT THEY ARE
19 CERTAINLY OUT THERE. AND THEN THE THIRD IS PRESERVING
20 THE POSSIBILITY OF REDRESS, WHICH YOU SAY IS A DIRECT
21 LINE TO DISGORGEMENT RESTITUTION.

22 I AM ASKING YOU TO SORT OF PUT ASIDE THAT
23 PRESERVING THE POSSIBILITY OF REDRESS AND TELL ME
24 WHETHER YOU THINK UNDER AMG I CANNOT FREEZE THE ASSETS
25 UNDER ENSURING THE ASSETS CAN BE LOCATED AND MAINTAINING

1 THE STATUS QUO.

2 MR. FREELAND: I DON'T BELIEVE AMG

3 PERMITS THAT.

4 THE COURT: SO POINT IN AMG WHERE IT SAYS

5 THAT.

6 MR. FREELAND: I DON'T HAVE IT, YOUR

7 HONOR, SORRY.

8 THE COURT: I AM GOING TO -- GIVEN THE

9 FACT THAT IT SEEMS LIKE WE ARE AT AN IMPASSE BECAUSE YOU

10 ARE NOT GOING TO MOVE ON YOUR POSITION, I NOW HAVE TO

11 ANALYZE AMG.

12 YOU CAN HAVE A SEAT.

13 LOOKING AT AMG, JUSTICE BREYER BEGINS THE

14 OPINION BY SAYING: SECTION 13(B) OF THE FEDERAL TRADE

15 COMMISSION ACT AUTHORIZES THE COMMISSION TO OBTAIN

16 IMPROPER CASES, A PERMANENT INJUNCTION IN FEDERAL COURT

17 AGAINST ANY PERSON, PARTNERSHIP OR CORPORATION THAT IT

18 BELIEVES IS VIOLATING OR IS ABOUT TO VIOLATE ANY

19 PROVISION OF LAW THAT THE COMMISSION ENFORCES. THE

20 QUESTION PRESENTED IS WHETHER THIS STATUTORY LANGUAGE

21 AUTHORIZES THE COMMISSION TO SEEK AND THE COURT TO AWARD

22 EQUITABLE MONETARY RELIEF, SUCH AS RESTITUTION OR

23 DISGORGEMENT. AND IT SAYS THAT WE CONCLUDE THAT IT DOES

24 NOT.

25 AMG CONCERNED A REQUEST FOR EQUITABLE

1 MONETARY RELIEF, SUCH AS RESTITUTION OR DISGORGEMENT.
2 IT WAS FILED UNDER SECTION 5(A) OF THE ACT. AFTER
3 SUMMARY JUDGMENT, THE LOWER COURT OR THE TRIAL COURT, I
4 SHOULD SAY, ORDERED THE DEFENDANT TO PAY 1.27 BILLION IN
5 RESTITUTION AND DISGORGEMENT.

6 THE DISTINCTIONS BETWEEN THIS CASE AND
7 AMG WAS, FIRST OF ALL, THE POSTURE. THE FEDERAL TRADE
8 COMMISSION HAD SPECIFICALLY ASKED THE COURT TO ISSUE A
9 PERMANENT INJUNCTION TO PREVENT THE DEFENDANT FROM
10 COMMITTING FUTURE VIOLATIONS OF THE ACT. AND THE COURT
11 HAD GRANTED THAT REQUEST FOR A PERMANENT INJUNCTION IN
12 DIRECTING THE DEFENDANT TO PAY THE MONEY.

13 AND THEN IN LOOKING AT THE LANGUAGE AND
14 STRUCTURE OF 13(B), WHICH THE COURT DID IN GREAT DETAIL,
15 THE COURT INDICATED THAT THE PROVISION FOCUSES UPON
16 RELIEF THAT IS PROSPECTIVE NOT RETROSPECTIVE. CONSIDER
17 THE WORDS "IS VIOLATING" AND "IS ABOUT TO VIOLATE," NOT
18 "HAS VIOLATED," SETTING FORTH WHEN THE COMMISSION MAY
19 REQUEST INJUNCTIVE RELIEF.

20 IN THIS CASE, THE FTC IS SAYING THAT THE
21 DEFENDANT IS VIOLATING AND IS CONTINUING TO VIOLATE.
22 AND THE COURT, BREYER SAYS: THESE WORDS REFLECT THAT
23 THE PROVISION ADDRESSES A SPECIFIC PROBLEM, NAMELY THEY
24 ARE STOPPING SEEMINGLY UNFAIR PRACTICES FROM TAKING
25 PLACE WHILE THE COMMISSION DETERMINES THEIR LAWFULNESS.

1 THE QUESTION THEN BECOMES AN ANALYSIS OF
2 SECTION 5. AMG DOES BAR RETROSPECTIVE EQUITABLE
3 MONETARY RELIEF, BUT IT DOES NOT BAR AN INJUNCTION -- A
4 TRO, RATHER, THAT ADDRESSES A SPECIFIC PROBLEM, NAMELY
5 THAT OF STOPPING SEEMINGLY UNFAIR PRACTICES FROM TAKING
6 PLACE WHILE THE COMMISSION DETERMINES THEIR LAWFULNESS.

7 SO THEREFORE, I FIND THAT IT IS
8 APPROPRIATE AT LEAST TO MAKE THE REQUEST AND TO ISSUE A
9 TEMPORARY RESTRAINING ORDER UNDER SECTION 5. ALSO,
10 UNDER THE BUSINESS OPPORTUNITY RULE, IT IS -- SUCH AN
11 INJUNCTION IS APPROPRIATE. AND I'M NOT GOING TO MAKE A
12 DECISION UNDER THE CRFA BECAUSE, QUITE SIMPLY, I HEARD
13 AN ARGUMENT FROM DEFENSE AND I HAVE NOT BEEN ABLE TO
14 EVALUATE THAT ARGUMENT.

15 SO WE CAN PROCEED ON THE REQUEST FOR
16 INJUNCTIVE RELIEF UNDER SECTION 5 THROUGH SECTION 13 AND
17 ALSO THE BUSINESS OPPORTUNITY RULE.

18 SO THEN THE QUESTION WE MOVE TO IS
19 LIKELIHOOD OF SUCCESS ON THE MERITS, RIGHT? AND WE ARE
20 GOING TO GO THROUGH THE ELEMENTS OF LIKELIHOOD OF
21 SUCCESS ON THE MERITS WITH SECTION 5. WOULD YOU LIKE TO
22 BEGIN WITH SECTION 5 AT THE FIVE OR WOULD YOU LIKE TO GO
23 TO THE BUSINESS OPPORTUNITY RULE FIRST, YOUR CHOICE?

24 MR. MCAULIFFE: I CAN DO SECTION 5, YOUR
25 HONOR.

1 THE COURT: OKAY. LET ME PUT ON THE
2 RECORD WHAT YOU NEED TO SHOW AND THEN WE WILL GO THROUGH
3 THAT.

4 THE ELEMENTS OF A SECTION 5(A), THE
5 STATUTE PROHIBITS DECEPTIVE ACTS OR PRACTICES IN OR
6 EFFECTING COMMERCE, WHICH IS 15 U.S.C. 45(A). GENERALLY
7 AN ACT OR PRACTICE IS DECEPTIVE UNDER SECTION 5(A) IF IT
8 INVOLVES A MATERIAL REPRESENTATION OR ADMISSION THAT IS
9 LIKELY TO MISLEAD CONSUMERS ACTING REASONABLY UNDER THE
10 CIRCUMSTANCES. THAT'S BENEFICIAL CALL VS. FDC, 542
11 F.2ND, 611, PINPOINT 617 TO 18. THAT'S 3RD CIRCUIT
12 1976.

13 WITH RESPECT TO THE ELEMENTS,
14 MATERIALITY, A REPRESENTATION IS MATERIAL IF IT INVOLVES
15 INFORMATION THAT IS IMPORTANT TO CONSUMERS AND HENCE
16 LIKELY TO EFFECT THEIR CHOICE REGARDING OR CONDUCT
17 REGARDING TWO -- REGARDING THE PRODUCT. AND THAT CAN BE
18 FOUND IN FTC VERSUS CYBERSPACE.COM, LLC, 453 F.3RD 1196
19 PINPOINT 1201, THAT'S NINTH CIRCUIT, THAT'S 2006. THE
20 COURT ASSUMES THAT EXPLICIT THINGS ARE MATERIAL. AND
21 THAT IS FOUND IN NHS SYSTEM, AND ALSO IN ADDITION TO THE
22 MATERIALITY, IT MUST BE LIKELY TO MISLEAD -- THE
23 REPRESENTATION IS LIKELY TO MISLEAD CONSUMERS IF THE
24 EXPRESSED OR IMPLIED MESSAGE CONVEYED IS FALSE. THE
25 DEFENDANT LACKED A REASONABLE BASIS FOR ASSERTING THAT

1 THE MESSAGE WAS TRUE AND COURTS LOOK TO THE OVERALL
2 IMPRESSION OF THE REPRESENTATIONS, AND THAT'S AMERICAN
3 HOME PRODUCTS, CORP. VERSUS FTC, 695, F.2ND, 681.

4 SO WHY DON'T YOU GO THROUGH MATERIALITY,
5 GO THROUGH LIKELY TO MISLEAD, AND THEN WE WILL TURN IT
6 OVER TO THE DEFENDANTS.

7 MR. MCAULIFFE: YES, YOUR HONOR.

8 SO THE CLAIMS THAT THE DEFENDANTS MADE
9 WHEN SELLING THEIR BUSINESS OPPORTUNITIES AND SELF-STUDY
10 PROGRAMS ARE CLEARLY MATERIAL TO CONSUMERS BECAUSE THEY
11 GO TO POTENTIAL INCOME THAT THEY COULD EARN.

12 THE COURT: AND THESE ARE ATTACHED TO
13 YOUR COMPLAINT, IS THAT RIGHT?

14 MR. MCAULIFFE: YES, YOUR HONOR. WE
15 INCLUDE EXAMPLES OF THESE EARNINGS CLAIMS IN THE
16 COMPLAINT AND THE TRO MOTION.

17 THE COURT: OKAY.

18 MR. MCAULIFFE: THEY MADE CLAIMS, YOUR
19 HONOR, LIKE THEY WOULD PROVIDE CONSUMERS WITH WORKING
20 AND PROFITABLE ECOMMERCE STORES IN AS LITTLE AS 30 DAYS.
21 IN THEIR OWN WORDS, THESE STORES WERE SUPPOSED TO BE A
22 SECONDARY INCOME STREAM THAT IS 90 PERCENT HANDS OFF AND
23 A MORE PREDICTABLE SOURCE OF CASH FLOW. AND THEY
24 REPEATEDLY CLAIM THAT THEY GAVE OUT TROPHIES TO
25 CONSUMERS FOR HITTING \$10,000, \$50,000 AND SEVEN FIGURES

1 WITH THEIR ECOMMERCE BUSINESSES. AND PRUSINOWSKI
2 HIMSELF ON TIKTOK, HE ALSO CLAIMED THAT STARTING
3 MILLION-DOLLAR BUSINESSES TODAY -- CLAIMED THAT CREATING
4 MILLION-DOLLAR ONLINE BUSINESSES ARE SIMPLE AND HE USED
5 DEFENDANT'S STRATEGY, THEN HE FURTHER INVITED CONSUMERS
6 TO COMMENT 100,000 -- OR 100K ON THE TIKTOK POSTS SO
7 THEY COULD START USING THIS SEVEN-FIGURE FUNNEL TEMPLATE
8 TO START SELLING WINNING PRODUCTS TODAY.

9 AND, YOUR HONOR, THEY REPEATEDLY USED
10 MISLEADING TESTIMONIALS IN THEIR ADVERTISING --

11 THE COURT: LET'S START WITH THE
12 MATERIALITY.

13 RESPOND TO MATERIALITY, WHY AREN'T THESE
14 CLAIMS MATERIAL OR THE REPRESENTATION MATERIAL?

15 MR. FREELAND: YOUR HONOR, YOU KNOW,
16 AGAIN, WITH THE BENEFIT OF MORE TIME, WE COULD HAVE GONE
17 THROUGH SORT OF SNIPPET BY SNIPPET OF THE CLAIMS THAT
18 THEY HAVE ATTACHED TO THEIR MOTION. BECAUSE THIS IS
19 VERY TYPICAL OF WHAT I HAVE SEEN IN THESE CASES. THE
20 FTC WILL SAY, IN ORDER TO UNDERSTAND WHAT THE WHOLE
21 CLAIM IS, YOU HAVE TO LOOK AT THE WHOLE CLAIM. AND THEN
22 THEY WILL JUST TAKE SOUND BITES AND SNIPPETS OF THIS
23 SCREENSHOT WITHOUT THE ENTIRE CONTEXT OF THE EACH
24 ADVERTISEMENT. AND THEY HAVE ATTACHED A NUMBER OF THEM
25 TO THEIR MOTION WHICH WE HAVE -- OBVIOUSLY NOT HAD

1 ADEQUATE TIME TO GO THROUGH AND FIGURE OUT, HERE IS THE
2 ENTIRE MESSAGE THAT THE CONSUMER RECEIVED.

3 I THINK THAT WITH RESPECT TO CERTAIN OF
4 THE CLAIMS, THEY ARE MATERIAL. BUT WE NEED THE ENTIRE
5 CONTEXT OF WHAT WAS MESSAGED TO THE CONSUMER TO
6 UNDERSTAND WHAT THE OVERALL TAKEAWAY IS, WHICH THE FTC
7 ADMITS IN ITS MOTION IS THE TEST. WE DON'T HAVE THAT IN
8 THEIR MOTION. THEY SAY THAT'S THE TEST, AND THEN WE
9 HAVE GOT, HERE IS CLAIM HERE, HERE IS A CLAIM FROM OVER
10 HERE, AND HERE IS A CLAIM FROM OVER HERE.

11 AND WE DID OUR BEST TO GET THROUGH THEM,
12 YOUR HONOR. AGAIN, WITH THE BENEFIT OF ADDITIONAL TIME,
13 WE COULD GO BACK AND TRY TO TRACK DOWN, HERE IS THE
14 ENTIRETY OF THAT VIDEO, HERE IS THE ENTIRETY OF WHAT
15 THAT TESTIMONY SAID. IS THERE A DISCLAIMER -- WE WOULD
16 BE ABLE TO DO ALL OF THOSE THINGS. BUT AS A GENERAL
17 MATTER WITH THOSE CAVEATS, I WOULD SAY THAT SOME OF THE
18 EARNINGS CLAIMS WOULD BE MATERIAL TO A CONSUMER'S
19 PURCHASES.

20 THE COURT: SO I THINK THAT ELEMENT IS,
21 AT LEAST FOR THE PURPOSES OF THE TRO UNDERSTANDING AND
22 HEARING WHAT YOU HAVE SAID AND UNDERSTANDING IN A TRO, I
23 AM STILL GOING TO HAVE TO HAVE A PRELIMINARY INJUNCTION
24 HEARING IN 20 DAYS ANYWAY.

25 SO MOVE ON TO LIKELY TO MISLEAD.

1 MR. MCAULIFFE: YES, YOUR HONOR.

2 THEY WERE LIKELY TO MISLEAD CONSUMERS WHO
3 ACTED REASONABLY UNDER THE CIRCUMSTANCES BECAUSE THEY
4 ARE FALSE. IT'S SIMPLE, YOUR HONOR. WE KNOW THEY ARE
5 FALSE FROM OUR EXPERT'S DECLARATION AND REPORTS FROM
6 CONSUMERS.

7 FOR EXAMPLE, CONSUMERS THEMSELVES
8 REPORTED NUMEROUS ISSUES WITH DEFENDANT'S SERVICES.
9 THEY COMPLAINED THAT THEIR BUSINESS STRATEGIES AND
10 TACTICS WERE MORE COMPLICATED AND LABOR INTENSIVE THAN
11 DESCRIBED.

12 FOR EXAMPLE, ONE CONSUMER REPORTED THAT
13 THE COURSE IS LACKING THE SUPPORT SYSTEM TO HELP
14 STUDENTS LAUNCH THE BUSINESS.

15 AND ANOTHER CONSUMER COMPLAINED THAT IT
16 WAS ALL PRETTY DENSE STUFF, WE FELT TROUBLED BECAUSE YOU
17 PAID FOR A BUSINESS IN A BOX, NOT TO GO TO ECOMMERCE
18 COLLEGE.

19 CONSUMERS ADDITIONALLY REPORTED LACK OF
20 COMMUNICATIONS OR POOR EXPLANATIONS FOR THEIR
21 UNDERPERFORMING STORES.

22 AND MOST IMPORTANTLY, THEY COMPLAINED
23 THAT THEIR STORES NEVER GENERATED SALES, YOUR HONOR.
24 FOR EXAMPLE, ONE CONSUMER STATED THAT HIS STORE NEVER
25 BOUGHT -- EXCUSE ME, NEVER BROUGHT IN MANY SALES. IT

1 HAD SHIPPING ISSUES AND HE HAD TO SPEND THOUSANDS OF
2 DOLLARS ON ADVERTISEMENTS.

3 AND ANOTHER CONSUMER STATED THAT THEIR
4 STORE NEVER RECEIVED ONE ORDER AND A TEST ORDER THAT HE
5 ACTUALLY PLACED NEVER EVEN ARRIVED.

6 AND LASTLY, YOUR HONOR, A CONSUMER EVEN
7 REPORTED THAT AFTER SPENDING \$12,000 OF HIS MILITARY
8 RETIREMENT, ALL HE GOT WAS ONE SALE, NO PROFIT AND A
9 BANNED FACEBOOK AD ACCOUNT.

10 AND YOUR HONOR, THEN WHEN CONSUMERS
11 REALIZED THEY ARE CONNED, THEY TRIED TO CANCEL THEIR
12 SERVICES AND REQUEST REFUNDS. DEFENDANTS MADE THEM JUMP
13 THROUGH ADDITIONAL HOOPS OR PROVE TO THEM FIRST THAT
14 THEY WERE ENTITLED TO A REFUND.

15 AND LASTLY, YOUR HONOR, DEFENDANT'S OWN
16 STATEMENTS CONFIRMED THAT THE CLAIMS THEY ARE USING IN
17 THE MARKETING ARE NOT TYPICAL. SO THEREFORE, THEY ARE
18 MISLEADING AND LIKELY TO MISLEAD A CONSUMER ACTING
19 REASONABLY UNDER THE CIRCUMSTANCES.

20 FOR EXAMPLE, THEY CONFIRM IN THEIR
21 MARKETING MATERIALS IN A PURPORTED DISCLAIMER, THEY
22 STATE AT THE BOTTOM OF ONE WEB PAGE THAT SALES FIGURES
23 STATED ABOVE ARE MY PERSONAL SALES FIGURES. PLEASE
24 UNDERSTAND RESULTS NOT TYPICAL. AND THEN THEY ALSO
25 INCLUDE IN OTHER BRIEF STATEMENTS THAT DID NOTHING TO

1 CHANGE THE DECEPTIVE IMPRESSION CREATED BY THE
2 DEFENDANT'S CONTINUOUS USE OF THESE CLAIMS THAT THE
3 RESULTS ARE NOT TYPICAL. AND THEY NEVER PROVIDED ANY
4 SUBSTANTIATION TO OUR UNDERCOVER INVESTIGATORS. WE HAVE
5 NOT SEEN ANY SUBSTANTIATION DOCUMENTS AS REQUIRED, FOR
6 EXAMPLE, THE BUSINESS OPPORTUNITY RULE, WHICH I AM SURE
7 WE WILL GET TO NEXT. BUT THAT'S THE REASON WE KNOW THEY
8 ARE LIKELY TO MISLEAD CONSUMERS, IS THAT THE CLAIMS
9 THEMSELVES ARE FALSE.

10 THE COURT: BEFORE I TURN TO DEFENSE
11 LIKELY TO MISLEAD CAN BE -- A REPRESENTATION IS LIKELY
12 TO MISLEAD CONSUMERS IF, ONE, THE EXPRESSED OR IMPLIED
13 MESSAGE CONVEYED IS FALSE OR, TWO, THE DEFENDANT LACKED
14 A REASONABLE BASIS FOR ASSERTING THE MESSAGE WAS TRUE.

15 I THINK WHAT THE FTC SAID, ADDING SOME
16 BELLS AND WHISTLES, WAS BECAUSE IT WAS NOT TYPICAL, IT
17 WAS NOT REASONABLE.

18 IN THAT, AT THIS JUNCTURE, DOES NOT MEET
19 SECTION 2, NEITHER DOES THE STATEMENTS -- DO THE
20 STATEMENTS THAT YOU SET FORTH ABOUT THE DEFENDANT SAYING
21 DON'T THINK YOU ARE GOING TO GET WHAT I GOT OUT OF THE
22 SYSTEM. AT THIS POINT WITH THE EVIDENCE BEFORE ME, THE
23 GOVERNMENT HAS NOT MET THAT ELEMENT OF LIKELY TO
24 MISLEAD.

25 SO WHAT YOU ARE FOCUSING IN IS ON --

1 DEFENDANT, IS ON THE EXPRESSED OR IMPLIED MESSAGES
2 CONVEYED. AND YOU ARE REALLY LOOKING AT THOSE CONSUMER
3 REPORTS SAYING THAT THEY HAD PROBLEMS. WHY ARE THOSE --
4 GIVEN THOSE CONSUMER REPORTS, WHY IS THAT SECOND PRONG,
5 LIKELY TO MISLEAD, NOT BEING MET HERE?

6 MR. FREELAND: THANK YOU, YOUR HONOR.

7 FOR A COUPLE OF REASONS. THE FIRST IS,
8 IT COMES -- WE CAN'T HAVE THE LIKELIHOOD TO MISLEAD
9 ELEMENT UNTIL WE KNOW WHAT THE OVERALL CLAIM IS, RIGHT.
10 IT GOES BACK TO WHAT I WAS SAYING BEFORE. WE HAVE GOT
11 SNIPPETS OF CLAIMS. SO WE NEED THE CONTEXT FIRST.
12 THAT'S REASON NUMBER ONE.

13 REASON NUMBER TWO IS THE FTC HAS HAD AT
14 LEAST SEVERAL MONTHS TO PREPARE THEIR PAPERS, THEIR
15 COMPLAINT, THEIR MOTION. THEY CAME UP WITH THREE FORMER
16 CLIENT DECLARATIONS. ONE FROM 2021, AND TWO FROM 2022.
17 IN LESS THAN 36 HOURS, WE HAVE COME UP WITH SIX, AND WE
18 ATTACHED THEM TO OUR OPPOSITION FILED EARLIER THIS
19 MORNING, YOUR HONOR. THESE AFFIDAVITS --

20 THE COURT: JUST FOR THE RECORD, I GOT
21 AND I READ.

22 MR. FREELAND: GOT YOU.

23 THOSE CLIENT DECLARATIONS, YOUR HONOR --
24 AND AGAIN, WITH THE BENEFIT OF ADDITIONAL TIME, WE CAN
25 CERTAINLY GET MORE. THEY DEMONSTRATE NOT JUST THAT

1 THESE FOLKS WERE NOT MISLEAD, THEY DEMONSTRATE THAT THEY
2 WENT THROUGH THE EDUCATION, THEY LISTENED TO THE
3 CONSULTING FROM THE DEFENDANTS, AND THEY SUCCEEDED. AND
4 THEY DIDN'T JUST SUCCEED, THEY ARE ACTUALLY PROUD OF
5 WHAT THEY HAVE DONE IN BUILDING THEIR OWN ONLINE
6 BUSINESS WITH THE HELP AND CONSULTING OF THE DEFENDANTS.

7 COMING BACK TO THE SUCCESS STORIES. WE
8 HAVE A DECLARATION FROM MR. PRUSINOWSKI HERE, I THINK
9 IT'S EXHIBIT 1, THAT GOES THROUGH -- I'M SORRY,
10 EXHIBIT 2 -- THAT GOES THROUGH A LOT OF THE CLAIMS THAT
11 ARE CHALLENGED BY THE FTC. AND I HEARD MR. MCAULIFFE
12 GET UP AND SAY THEY ARE FALSE. WELL, MR. PRUSINOWSKI
13 SUBMITTED THE DECLARATION SAYING THAT THEY ARE NOT.
14 THEY ARE NOT FALSE.

15 AND SO, IF THEY ARE NOT FALSE, THEY CAN'T
16 MISLEAD. BUT AGAIN, YOUR HONOR, IT DOES COME BACK TO --

17 THE COURT: WELL, IF THE EXPRESS OR
18 IMPLIED MESSAGE CONVEYED IS FALSE. SO THAT SUGGESTS
19 THAT IT COULD BE TRUE BUT IMPLIED SOMETHING ELSE.

20 MR. FREELAND: RIGHT, YOUR HONOR. AND TO
21 THAT POINT, I THINK WE HAVE A SIMILAR EXAMPLE IN OUR
22 OPPOSITION. IT WOULD BE LIKE SAYING, THIS COLLEGE HAS
23 FIVE NOBEL LAUREATES THAT GRADUATED FROM IT. IT WOULD
24 BE LIKE SAYING, THEY CANNOT SAY THAT BECAUSE EVERY
25 STUDENT THAT GOES THERE THINKS THEY ARE GOING TO BECOME

1 A NOBEL LAUREATE. IT'S SIMILAR HERE. AND AGAIN, THE
2 CONTEXT OF THE AD IS WHAT MATTERS THE MOST. AND WE
3 DON'T HAVE THAT HERE, WE JUST DON'T HAVE THE CONTEXT.
4 WE HAVE GOT SNIPPETS FROM HERE AND THERE AND EVERYWHERE,
5 NOT THE ENTIRE CONTEXT. AND YOU HAVE TO HAVE THAT IN
6 ORDER TO GO AD BY AD, CLAIM BY CLAIM TO DETERMINE WHAT
7 THE OVERALL IMPRESSION IS, FIRST, AND WHETHER IT'S
8 SOMETHING LIKE WE HAD FIVE NOBEL LAUREATES GRADUATE FROM
9 YOUR COLLEGE; DON'T EXPECT TO BE A NOBEL LAUREATE. OR
10 WHETHER IT'S COME TO OUR COLLEGE, YOU ARE GOING TO
11 BECOME A NOBEL LAUREATES. YOU NEED THE WHOLE CONTEXT OF
12 THE AD, OF EACH AD THAT THEY PUT BEFORE THE COURT BEFORE
13 YOU CAN GET TO THE LIKELIHOOD TO MISLEAD PART OF IT.

14 SO FOR THAT ADDITIONAL REASON, YOUR
15 HONOR, I DON'T THINK THEY HAVE SATISFIED THE LIKELIHOOD
16 TO MISLEAD ELEMENT.

17 THE COURT: OKAY. SO GOVERNMENT, RESPOND
18 TO THE TWO SALIENT POINTS HERE. ONE IS THAT DEFENDANTS
19 HAVE NOT HAD TIME TO TALK ABOUT CONTEXT BECAUSE THEY
20 ONLY GOT THIS THING, WHAT, YOU WERE APPOINTED 5 O'CLOCK
21 YESTERDAY?

22 MR. FREELAND: NO, IT WAS LATE IN THE
23 EVENING WEDNESDAY, YOUR HONOR.

24 THE COURT: AND TODAY IS FRIDAY MORNING,
25 RIGHT?

1 MR. FREELAND: I THINK SO.

2 THE COURT: I THINK SO, TOO.

3 SO CONTEXT IS ONE ARGUMENT. AND THE
4 OTHER IS THAT BECAUSE THERE ARE STATEMENTS FROM SUCCESS
5 STORIES FROM CUSTOMERS WHO HAVE HAD SUCCESS IN THIS
6 PROGRAM THAT THAT SHOULD OUTWEIGH OR SHOULD NEGATE -- I
7 AM NOT REALLY SURE WHAT THE ARGUMENT THERE WAS -- THAT
8 THERE ARE OTHER CUSTOMERS WHO SAY THEY WERE MISLEAD BY
9 EITHER IMPLIED OR EXPLICIT FALSE MESSAGES.

10 MS. GRIER: I'M NOT SURE WHAT STANDARD HE
11 IS REFERRING TO. I SUSPECT THAT IT'S THE NET
12 IMPRESSION, THAT SOME COURTS HAVE DETERMINED THAT EVEN
13 IMPLIED STATEMENTS OR STATEMENTS THAT HAVE A DISCLAIMER
14 OR STATEMENTS WHERE ON THEIR FACE THEY ARE NOT DECEPTIVE
15 BUT GIVEN THE CONTEXT OF THE ENTIRE DECEPTIVE PRACTICE,
16 THE NET IMPRESSION OF WHAT CONSUMERS SEE IS DECEPTIVE.

17 SO IN THIS CASE, WE DON'T NEED TO HAVE A
18 CONVERSATION ABOUT THE OVERALL NET IMPRESSION OR THE
19 OVERALL CONTEXT BECAUSE IN THIS CASE THERE ARE MATERIAL
20 EXPLICIT CLAIMS OF EARNINGS. WE HAVE PUT BEFORE THE
21 COURT MANY VIDEO CAPTURES. MANY CAPTURES FROM THEIR
22 WEBSITE, FOR EXAMPLE, HAS ONE OF THE MOST EGREGIOUS
23 CLAIMS THAT PEOPLE CAN MAKE MILLION OF DOLLARS AND THAT
24 THE DEFENDANT WILL PROVIDE A COMPLETE BUSINESS AND HAND
25 THAT OVER TO YOU READY AND WILLING TO BE PROFITABLE WHEN

1 IT IS HANDED OVER AND THAT THAT BUSINESS IS GOING TO
2 EARN YOU \$10,000 A MONTH, MILLIONS OF DOLLARS, TENS OF
3 MILLION EVEN, AND THAT'S GOING TO START RIGHT AWAY.

4 SO FIRST OF ALL, I JUST WANT TO CLARIFY
5 THERE IS NO RULE THAT SAYS THAT THE ENTIRE CONTEXT HAS
6 TO BE TAKEN INTO ACCOUNT IF THERE IS EXPLICIT EARNINGS
7 CLAIMS. SO WE HAVE THAT IN OUR BRIEF REGARDING THE FACT
8 THAT IF THERE IS EXPLICIT EARNINGS CLAIMS, THEY ARE
9 MATERIAL. WHEN SOMEBODY WANTS TO BUY A PRODUCT THAT IS
10 A BUSINESS OPPORTUNITY WHERE THE PURPOSE OF THE PRODUCT
11 IS FOR ME TO HAVE MONEY AND EARN AN INCOME, EARN A
12 PASSIVE INCOME, THESE CLAIMS ARE COMPLETELY ALL OVER THE
13 WEBSITE. JUST THIS WEEK THE DEFENDANT POSTED MORE
14 YOUTUBE VIDEOS, AND I HAVE ADDITIONAL DECLARATIONS TO
15 SHOW THAT THIS IS STILL GOING ON. HE POSTED ADDITIONAL
16 YOUTUBE VIDEOS AND ADDITIONAL ADS WHERE THEY SAY
17 EVERYWHERE \$10,000 A MONTH, YOU CAN DO THIS, JUST PAY
18 US, YOU KNOW, 10, 25, \$35,000 AND WE CAN DO THIS FOR
19 YOU.

20 SO I WANT TO JUST BE CLEAR THAT WE ARE
21 SAYING THAT IT IS A MATERIAL EXPRESS EARNINGS CLAIM.
22 THERE IS VERY FEW THINGS THAT ARE MORE MATERIAL TO
23 SOMEBODY WHO IS TRYING TO EARN INCOME THAN HOW MUCH
24 MONEY THEY CAN MAKE.

25 THE COURT: BUT WE'VE MOVED FROM

1 MATERIALITY TO LIKELY TO MISLEAD. SO YOU ARE GOING BACK
2 TO THE CASE LAW ON MATERIALITY, AND I WANT TO FOCUS IN
3 ON LIKELY TO MISLEAD.

4 MS. GRIER: I WANTED TO CLARIFY WHAT HE
5 WAS SAYING ABOUT THE CONTEXT.

6 SO THE SECOND THING THAT YOU SAID WAS
7 DEFENDANTS HAD NOT HAD TIME. THIS IS REALLY SIMPLE.
8 THEY NEED TO PROVIDE VALID SUBSTANTIATIONS FOR THE
9 CLAIMS THAT WERE MADE AT THE TIME THEY MADE THEM. THIS
10 SHOULD ALREADY BE IN THEIR RECORDS. UNDER THE BUSINESS
11 OPPORTUNITY RULE AND OTHER CASES, IF THEY DON'T HAVE THE
12 SUBSTANTIATION AT THE TIME THAT THE CLAIMS WERE MADE,
13 THEN THAT'S A LACK OF SUBSTANTIATION. SO WE ARE SAYING
14 THAT THEY LACKED SUBSTANTIATION AND THAT THEY ARE FALSE.

15 SO WHEN IT COMES TO LACK OF
16 SUBSTANTIATION, LIKE YOU SAID, THEY HAVE HAD -- YOU
17 KNOW, IT HAS BEEN SHORT, BUT AT THE SAME TIME THEY
18 SHOULD HAVE THIS READILY AVAILABLE FOR ANY CLIENT WHO
19 COMES TO THEM. THIS SHOULD BE SOMETHING THAT IS
20 REGULARLY PROVIDED TO CLIENTS, AND THAT'S WHY THE
21 BUSINESS OPPORTUNITY RULE IS SO IMPORTANT.

22 THE COURT: WE ARE NOT TALKING ABOUT
23 BUSINESS OPPORTUNITY RULE YET. WE HAVE NOT GOTTEN THERE
24 YET. I AM JUST FOCUSING ON SECTION 5(A). AS YOU HAVE
25 SEEN, I AM BEING VERY FOCUSED ON EVERY ELEMENT BECAUSE I

1 WANT THIS RECORD TO BE RIGHT.

2 MS. GRIER: I UNDERSTAND.

3 UNDER SECTION 5 IT'S THE SAME, THAT THEY
4 NEED TO PROVIDE SUBSTANTIATION FOR THE CLAIMS THAT THEY
5 MADE AT THE TIME THAT THEY WERE MADE. AND SO THEY HAVE
6 NOT PROVIDED THAT. THE CONSUMER DECLARATIONS THEY
7 PROVIDED US EARLY THIS MORNING, THEY DO NOT SHOW THAT
8 THESE CONSUMERS ARE MAKING MONEY. MANY OF THEM, AND I
9 CAN GO THROUGH THEM ONE BY ONE, BUT MR. CLARK SAYS HE
10 MADE -- HAD \$30,000 IN REVENUE SINCE MAY 2022. NOW,
11 THEY ARE SAYING THIS IS THE TOTAL REVENUE. THERE IS NO
12 PROFIT AND LOSS SHEETS. THERE IS NO DISCUSSION OF WHAT
13 THEIR BUSINESS EXPENSES ARE. WHAT OUR EXPERT SAYS IS
14 THAT THEY DO NOT INCLUDE ANY OF THE COSTS AND RUNNING
15 THESE TYPES OF ECOMMERCE STORES ARE VERY EXPENSIVE
16 ADVERTISING. IN DEFENDANT'S OWN WORDS, HE SAID THAT
17 THEY ARE \$5 A CLICK, EVERY TIME SOMEBODY CLICKS ON AN
18 AD, THE CLIENTS -- THE EEB'S CLIENTS HAVE TO PAY \$5 AN
19 AD. SO WHEN YOU SEE CLICKS, THIS IS HOW MANY CLICKS WE
20 HAVE GOT, ISN'T THIS A GREAT CAMPAIGN. TIMES THAT BY
21 FIVE AND THAT'S HOW MUCH THEY HAD TO PAY FOR THOSE
22 CLICKS.

23 OUR EXPERT SAYS, HEY, LET'S BE
24 CONSERVATIVE. I DID MY OWN ANALYSIS, BECAUSE I AM AN
25 EXPERT, AND I SAY, IT'S PROBABLY -- WITH THIS INDUSTRY

1 AND THIS KIND, IT'S PROBABLY SOMEWHERE BETWEEN TWO AND
2 THREE DOLLARS PER CLICK. SO IF YOU ADD IN THE
3 ADVERTISING COST AND YOU SAY, HOW MANY CLICKS DID THEY
4 ADD AND WHAT ARE THE ADVERTISING COSTS THAT WERE
5 ASSOCIATED WITH THIS, THESE STORES ARE LOSING MONEY ON
6 AVERAGE, THEY ARE NOT EARNING MONEY. SO TO HAVE
7 CONSUMER DECLARATIONS THAT ARE SAYING, I MADE \$35,000 IN
8 TOTAL REVENUE SINCE MAY OF 2022, THAT'S MORE THAN TWO
9 YEARS, AND THEY HAVE ONLY MADE \$30,000 IN REVENUE.

10 THE COURT: SO --

11 MS. GRIER: THESE ARE NOT CONSUMERS WHO
12 ARE MAKING MONEY.

13 THE COURT: SO WITH RESPECT TO YOUR
14 REFERENCE TO THE EXPERT, I'M NOT -- I DON'T HAVE AN
15 EXPERT HERE IN FRONT OF ME. I DON'T KNOW WHETHER THERE
16 WAS AN EXPERT REPORT ATTACHED. IF THERE WAS AN EXPERT
17 REPORT ATTACHED, HE OR SHE DID NOT LOOK AT THE CUSTOMER
18 STATEMENTS THAT WERE FILED BY DEFENDANT AT 3 O'CLOCK
19 THIS MORNING FOR SURE, SO I'M NOT GOING TO TAKE THAT
20 INTO ACCOUNT.

21 BUT SHEARING YOUR ARGUMENT OF THAT
22 PARTICULAR COMPONENT, I AM GOING TO TURN TO DEFENDANT
23 AND ASK FOR A RESPONSE.

24 MR. FREELAND: YOUR HONOR, THE FTC SAYS
25 ITSELF IN ITS BRIEF, AND THIS IS ECF 4 AT PAGE 27,

1 TALKING ABOUT NET IMPRESSION, QUOTE, IN DETERMINING
2 WHETHER A REPRESENTATION IS LIKELY TO MISLEAD CONSUMERS,
3 COURTS CONSIDER THE OVERALL NET IMPRESSION IT CREATES,
4 END QUOTE. NEXT SENTENCE, QUOTING AN AUTHORITY. A
5 SOLICITATION MAY BE LIKELY TO MISLEAD BY VIRTUE OF THE
6 NET IMPRESSION IT CREATES EVEN THOUGH THE SOLICITATION
7 ALSO CONTAINS TRUTHFUL DISCLOSURES, CLOSE QUOTE. THAT'S
8 FOOTNOTE 123, YOUR HONOR. I AM NOT SURE WHAT CASE THAT
9 IS, BUT IT LOOKS LIKE IT'S CYBERSPACE.COM.

10 AND AGAIN, COMING BACK TO THIS, AND I
11 KNOW I WILL HAVE LOTS TO SAY ABOUT THE BUS OPP STUFF
12 WHEN WE GET THERE, YOUR HONOR, I KNOW WE ARE NOT TALKING
13 ABOUT THAT NOW.

14 COMING BACK TO IT. YOU CANNOT REACH THE
15 LIKELIHOOD TO MISLEAD COMPONENT IF YOU DON'T KNOW WHAT
16 THE NET IMPRESSION IS. AND WE DON'T KNOW WHAT THE NET
17 IMPRESSION IS FROM THE ADS AND THE SNIPPETS AND THE
18 LITTLE BIT A CLAIM HERE, A CLAIM THERE, A CLAIM HERE.
19 WE DON'T KNOW WHAT IT IS, YOUR HONOR, ON THIS RECORD.

20 THE COURT: SO I THINK THAT THERE IS A
21 FINE POINT TO BE MADE HERE ABOUT WHAT IS MEANT BY
22 OVERALL IMPRESSION OR NET IMPRESSION. I THINK ONE IS,
23 IF YOU LOOK AT THE STATEMENT ITSELF AND YOU PARSE THE
24 LANGUAGE OF THE STATEMENT AND YOU SAY, IN THAT
25 STATEMENT, THE OVERALL IMPRESSION WITH RESPECT TO THAT

1 STATEMENT ITSELF STANDING ALONE IS THAT IT IS LIKELY TO
2 MISLEAD.

3 I THINK WHAT YOU ARE SAYING IS BECAUSE
4 SOME PEOPLE HAD ONE IMPRESSION AND SOME PEOPLE HAD A
5 DIFFERENT IMPRESSION THAT THAT'S WHAT WE ARE LOOKING FOR
6 IN AN OVERALL IMPRESSION. I AM NOT SURE THAT'S WHAT THE
7 CASE LAW SAYS.

8 MR. FREELAND: I BELIEVE IT'S BOTH, YOUR
9 HONOR. SO WE CAN LOOK AT A CLAIM IN ISOLATION AND SAY,
10 WHAT IS THE NET IMPRESSION OF THIS CLAIM? BUT YOU DON'T
11 KNOW WHAT THE NET IMPRESSION OF WHAT THE CONSUMER
12 RECEIVED UNLESS YOU LOOK AT EVERYTHING THAT IS
13 SURROUNDING IT.

14 THE COURT: THAT'S YOUR CONTEXT ARGUMENT?

15 MR. FREELAND: CORRECT.

16 THE COURT: IN THE CONTEXT OF THIS TRO,
17 ON THE INFORMATION I HAVE RIGHT NOW, UNDERSTANDING THAT
18 ON THE PRELIMINARY INJUNCTION WE WOULD BE LOOKING FOR
19 MORE CONTEXT, AND THE DEFENDANT WILL BE ABLE TO PROVIDE
20 THAT CONTEXT, I FIND THAT THERE IS A LIKELY TO MISLEAD.
21 SO THEREFORE, AT LEAST ON THIS TRO, THE GOVERNMENT HAS
22 MET ITS BURDEN ON SECTION 5(A).

23 NOW, GIVEN WHAT I HAVE SAID ABOUT AMG AND
24 GIVEN THAT WITH RESPECT TO THE REQUEST FOR ASSET FREEZE,
25 MY ORDER WOULD CLEARLY STATE THAT IT IS ONLY FOR THE

1 MAINTAINING THE STATUS QUO, AND WHAT WAS THE OTHER ONE,
2 INSURING THAT THE ASSETS CAN BE LOCATED.

3 I AM NOT SURE THAT THERE IS A REASON TO
4 MOVE ON TO THE BUSINESS OPPORTUNITY RULE UNLESS THE
5 PLAINTIFFS CAN TELL ME OTHERWISE.

6 MS. GRIER: YOUR HONOR, COULD I ASK A
7 CLARIFICATION QUESTION?

8 THE COURT: YES.

9 MS. GRIER: ARE WE JUST TALKING ABOUT THE
10 ASSETS FREEZE AND NOT THE ENTIRE TRO? WE ARE ALSO
11 REQUESTING A RECEIVERSHIP.

12 THE COURT: I KNOW. I THINK THAT -- SO
13 IS IT YOUR VIEW THAT UNDER SECTION 5(A) ALL OF THOSE
14 OTHER THINGS THAT YOU REQUESTED COULD NOT HAPPEN, THEY
15 WOULD ONLY HAPPEN UNDER THE BUSINESS OPPORTUNITY RULE,
16 IS THAT WHAT YOU ARE SAYING?

17 I THINK IF YOU HAVE MET -- IF YOU PROVE
18 LIKELIHOOD OF SUCCESS ON 5(A), I THINK WE THEN GO TO
19 WHAT RELIEF IS APPROPRIATE. AND IF THERE IS -- IF IN
20 YOUR VIEW THERE IS MORE POTENTIAL INJUNCTIVE RELIEF
21 UNDER THE BUSINESS OPPORTUNITY RULE THAN UNDER 5(A),
22 THEN WE NEED TO GO TO THE BUSINESS OPPORTUNITY RULE.
23 BUT IF YOU BELIEVE IT IS THE SAME, THEN WE DON'T NEED TO
24 DO THAT.

25 MR. MCAULIFFE: YOUR HONOR, I THINK I CAN

1 ANSWER THAT.

2 SO WE DO BELIEVE THERE IS ADDITIONAL
3 INJUNCTIVE RELIEF UNDER THE BUSINESS OPPORTUNITY RULE.
4 SO WE HAVE ALLEGED THREE COUNTS. TWO ARE VERY CLOSE TO
5 THE SECTION 5(A) COUNTS. BOTH DEAL WITH EARNINGS. ONE
6 DEALS WITH EARNINGS CLAIMS AND ONE DEALS WITH
7 MISREPRESENTATIONS TO CONSUMERS WHEN YOU ARE SELLING
8 BUSINESS OPPORTUNITIES.

9 WE WOULD SAY THAT IF THE INJUNCTIVE
10 RELIEF FOR THE TRO FOR THE SECTION 5, THAT THEY WOULD
11 LIKELY REACH THOSE TWO COUNTS.

12 THE COURT: JUST VERY QUICKLY, TELL ME
13 THE TWO BUCKETS.

14 MR. MCAULIFFE: YES. SO THERE IS THREE,
15 WE HAVE ALLEGED THREE BUSINESS OPPORTUNITY RULE COUNTS.

16 THE COURT: YES.

17 MR. MCAULIFFE: ONE IS -- I CAN BE EXACT,
18 YOUR HONOR. ONE IS MAKING MISREPRESENTATIONS REGARDING
19 INCOME AND PROFITS, AND THE OTHER IS USING DECEPTIVE
20 EARNINGS CLAIMS WHEN YOU ARE SELLING BUSINESS
21 OPPORTUNITIES. AND ALL OF THE EVIDENCE THAT WE HAVE --

22 THE COURT: THAT'S ONLY TWO.

23 MR. MCAULIFFE: RIGHT, SORRY, YOUR HONOR.
24 AND THE LAST ONE IS THEY FAILED TO PROVIDE DISCLOSURE
25 DOCUMENTS, WHICH ARE REQUIRED UNDER THE RULE.

1 THE COURT: OKAY. SO WITH RESPECT TO THE
2 MAKING MISREPS, THAT'S PRETTY MUCH A MIRROR OF THE 5(A),
3 CORRECT?

4 MR. MCAULIFFE: EXACTLY.

5 THE COURT: WHAT ABOUT THE DECEPTIVE
6 EARNINGS CLAIMS, IS THAT ALSO A MIRROR OF THE 5(A)?

7 MR. MCAULIFFE: IT IS VERY CLOSE EXCEPT
8 WITHIN THE BUSINESS OPPORTUNITY RULE, THERE IS ALSO A
9 REQUIREMENT THAT THEY PROVIDE AN EARNINGS CLAIM
10 STATEMENT, AND THAT'S SPECIFIC -- I MEAN, IT'S IN THE
11 RULE ITSELF.

12 THE COURT: OKAY.

13 MR. MCAULIFFE: SO THAT WOULD BE AN
14 ADDITIONAL.

15 THE COURT: WHAT ABOUT FAILURE TO PROVIDE
16 DISCLOSURES, IS THAT SOMETHING THAT IS UNDER 5(A) OR
17 JUST UNDER THE BUSINESS OPPORTUNITY RULE?

18 MR. MCAULIFFE: THAT WOULD BE JUST UNDER
19 THE BUSINESS OPPORTUNITY RULE.

20 THE COURT: SO THEN ESSENTIALLY THE
21 QUESTION IS, IS ARE THERE ADDITIONAL INJUNCTIVE REMEDIES
22 UNDER THE TWO BUCKETS IN THE BUSINESS OPPORTUNITY RULE
23 WHICH ARE NOT IN 5(A), WHICH ARE THE DECEPTIVE EARNINGS
24 CLAIMS STATEMENT AND THE FAILURE TO PROVIDE DISCLOSURES.

25 AND WE ARE JUST FOCUSING ON REMEDIES AT

1 THIS POINT.

2 MR. MCAULIFFE: SO WE WOULD SAY THAT THE
3 ASSET FREEZE THAT WE HAVE REQUESTED UNDER 19 WOULD REACH
4 THE BUSINESS OPPORTUNITY RULE VIOLATIONS.

5 THE COURT: BUT I WILL TELL YOU RIGHT NOW
6 THAT UNDER 5 (A) I'M GOING TO DO AN ASSET FREEZE BUT NOT
7 -- BUT IN THE LIMITED WAY THAT I TALKED ABOUT,
8 REGARDLESS OF WHAT YOU DO ON BUSINESS OPPORTUNITY.

9 SO GIVEN THAT, IS THERE -- THERE ARE
10 OTHER THINGS THAT ARE REQUESTED, AND WE CAN GO BACK TO
11 THEM. SO IS THERE ANYTHING ABOUT THE BUSINESS
12 OPPORTUNITY BUCKETS THAT ARE NOT MENTIONED IN 5 (A) THAT
13 YOU HAVE MENTIONED THAT WOULD -- WELL, YOU SAID -- I
14 THINK EVERYBODY AGREED UNDER 5 (A) I COULD LIMIT
15 DISCOVERY, I COULD ORDER A SHOW CAUSE, I COULD TURN OVER
16 BUSINESS RECORDS, I CAN PROVIDE -- REQUIRE IMMEDIATE
17 ACCESS TO DEFENDANT'S BUSINESS PREMISES, AND I CAN
18 APPOINT A TEMPORARY RECEIVER. SO EVERYBODY SAID I CAN
19 DO THAT UNDER 5 (A), I THINK. THEY DIDN'T SAY I SHOULD,
20 BUT THEY SAID I COULD, RIGHT?

21 MR. FREELAND: ASSUMING LIKELIHOOD ON THE
22 SUCCESS OF THE MERITS.

23 THE COURT: RIGHT. AND I HAVE ALREADY
24 DECIDED THAT THERE IS A LIKELIHOOD OF SUCCESS ON THE
25 MERITS OF 5 (A), RIGHT.

1 SO ALL WE ARE TALKING ABOUT IS WHETHER
2 THE BUSINESS OPPORTUNITY RULE CHANGES THE EQUATION WITH
3 RESPECT TO ASSET FREEZE, BUT I ALREADY TOLD YOU THAT I
4 AM NOT -- WITH RESPECT TO ASSET FREEZE, I AM CAREFULLY
5 CABINING THAT.

6 SO I SUPPOSE THE QUESTION STILL REMAINS,
7 GIVEN WHAT I HAVE JUST TOLD YOU, IS THERE ANY REASON WHY
8 WE SHOULD MOVE ON TO A DISCUSSION OF THE BUSINESS
9 OPPORTUNITY RULE?

10 MR. MCAULIFFE: COURT'S INDULGENCE.

11 THE COURT: GO AHEAD.

12 (BRIEF PAUSE IN THE PROCEEDING.)

13 MS. GRIER: YOUR HONOR, WE AGREE WITH
14 YOUR ANALYSIS.

15 MR. MCAULIFFE: RIGHT. WE ARE WORKING TO
16 MAKE SURE THAT WE ARE INFORMING THE COURT OF FTC LAW AND
17 THAT YOU UNDERSTAND THE WAY THAT THE SECTION 13(B) AND
18 THE SECTION 19 WORKS. WE AGREE WITH YOUR ANALYSIS AND
19 DON'T SEE ANY HARM IN HAVING AN ASSET FREEZE THAT
20 MAINTAINS THE STATUS QUO.

21 THE COURT: WELL, REMEMBER, THIS IS ONLY
22 THE TRO CONTEXT. THE WORLD COULD CHANGE IN THE
23 PRELIMINARY INJUNCTION.

24 THEN I GO TO BALANCING THE EQUITIES AND
25 THE PUBLIC INTEREST. BECAUSE THE BALANCE IS FOCUSED ON

1 THE PUBLIC INTEREST, THE PUBLIC INTEREST SHOULD RECEIVE
2 GREATER WEIGHT THAN PRIVATE ONES. AND THAT'S WORLDWIDE
3 FACTORS LIMITED 88 F.2ND AT 346 TO 47.

4 SO HERE, TELL ME ABOUT THE PUBLIC
5 INTEREST.

6 AND I ASSUME THAT DEFENSE IS GOING TO
7 COUNTER THE PUBLIC INTEREST AND TELL ME ABOUT THE
8 PRIVATE INTEREST, CORRECT?

9 MR. FREELAND: CORRECT, YOUR HONOR.

10 THE COURT: TELL ME ABOUT THE PUBLIC
11 INTEREST.

12 MR. MCAULIFFE: YES, YOUR HONOR.

13 IT'S CLEAR HERE, IT'S OUR POSITION THAT
14 IT IS CLEAR, THE PUBLIC INTEREST IN THIS CASE IS
15 COMPELLING. IT'S HALTING, UNLAWFUL AND HARMFUL CONDUCT
16 IN PRESERVING ASSETS FOR POTENTIAL RESTITUTION TO
17 INJURED CONSUMERS AT THE CONCLUSION OF THIS LITIGATION.

18 AND YOUR HONOR, IN CONTRAST, DEFENDANTS
19 HAVE NO LEGITIMATE INTEREST IN CONTINUING THEIR
20 FRAUDULENT SCHEME, AND THAT'S WHY A TEMPORARY
21 RESTRAINING ORDER WILL PREVENT THEM FROM FURTHER HARMING
22 THE PUBLIC.

23 THE COURT: OKAY.

24 DEFENSE.

25 MR. FREELAND: THANK YOU, YOUR HONOR.

1 AS I BELIEVE I SAID AT THE OUTSET, I WILL
2 SAY IT AGAIN. WE AGREE TO AN ORDER THAT WOULD REQUIRE
3 US TO COMPLY WITH SECTION 5. IN FACT, WE AGREE TO TAKE
4 THE CONSUMER FACING ADS DOWN IN ORDER TO THEN EFFECT
5 PENDING WHATEVER HEARING IS GOING TO COME AFTER THIS
6 ONE.

7 WHERE WE HAVE AN ISSUE IS WITH RESPECT TO
8 THE 250 CUSTOMERS THAT ARE CURRENTLY BEING CONSULTED
9 SUCCESSFULLY BY THE DEFENDANTS AND THE PEOPLE THAT ARE
10 -- WE HAVE NOT EVEN TALKED ABOUT THE ENTIRE SOFTWARE
11 WING OF THIS COMPANY, OKAY. WE HAVE BEEN TALKING ABOUT
12 THE EDUCATION, THE BUSINESS COACHING, BUSINESS
13 CONSULTING SIDE OF THINGS.

14 THE COURT: LET ME ASK YOU A QUESTION.
15 THE SOFTWARE WING, IS THAT A DIFFERENT DEPARTMENT, IS IT
16 ALL -- IS EVERYTHING INTERMINGLED OR IS THERE A CLEAR
17 SEPARATION?

18 MR. FREELAND: THERE MAY OR MAY NOT BE,
19 YOUR HONOR. I HAVE NOT HAD ENOUGH TIME TO INVESTIGATE
20 IT. BUT I DO KNOW THIS: THERE ARE SOME PEOPLE WHO ARE
21 BEING SERVICED -- ACTUALLY, I DO KNOW THIS. THERE ARE
22 SOME PEOPLE WHO ARE USING THE -- HOLD ON, YOUR HONOR,
23 LET ME MAKE SURE I GET THE NAME OF IT CORRECT. THE
24 STOREFUNNELS.NET SOFTWARE, WHICH IS -- I THINK YOU CAN
25 CALL IT -- IT'S A SEPARATE DBA OF THE CORPORATE -- OF

1 THE LLC DEFENDANT IN THE CASE. SO THE PEOPLE THAT ARE
2 ON STOREFUNNELS.NET, THINK OF IT LIKE A SHOPIFY
3 PLATFORM, RIGHT, YOUR HONOR. LIKE, I HAVE GOT SOMETHING
4 I WANT TO SELL, I NEED AN ONLINE STORE FRONT, SOFTWARE,
5 THAT I CAN USE TO UPLOAD MY PRODUCT, TELL CONSUMERS
6 ABOUT IT, AND THEN THEY BUY OR THEY DON'T BUY. THERE
7 ARE SOME PEOPLE THAT ARE ON THE STOREFUNNELS.NET
8 SOFTWARE WHO ARE ALSO RECEIVING THE BUSINESS AND
9 MARKETING CONSULTING SERVICES --

10 THE COURT: THEY ARE WITHIN THAT 200,
11 IT'S A VENN DIAGRAM WITHIN THOSE 250 CUSTOMERS?

12 MR. FREELAND: CORRECT. THERE IS OVERLAP
13 BETWEEN THE TWO SIDES OF THE BUSINESS. THERE ARE ALSO
14 PEOPLE, BUSINESSES, THAT ARE ON THE STOREFUNNELS.NET
15 SOFTWARE RUNNING THEIR STORES, MAKING PRODUCT SALES THAT
16 DID NOT GO THROUGH THE EDUCATION AND CONSULTING SERVICES
17 ON THAT SIDE OF THE BUSINESS.

18 SO OUR CONCERN IS THAT IF THE TRO IN ANY
19 WAY EVEN PUTS A SPEEDBUMP ON THOSE OPERATIONS, IT'S
20 GOING TO HAVE A DETRIMENTAL IMPACT ON THE PEOPLE THAT
21 ARE USING THIS SOFTWARE TO RUN THEIR BUSINESSES WHERE
22 THEY CAN LITERALLY BE SELLING THINGS 24 HOURS A DAY.
23 THOSE WOULD BE INCIDENT VICTIMS OF THE TRO WERE IT TO
24 REACH OUT TO THEM. AND AGAIN, IT'S NOT LIKE IT'S JUST
25 MR. PRUSINOWSKI HERE THAT DOES THIS. THERE IS A WHOLE

1 TEAM OF SOFTWARE ENGINEERS, MARKETING SPECIALISTS, THERE
2 ARE INDEPENDENT CONTRACTORS THAT MAKES THAT
3 STOREFUNNELS.NET SOFTWARE HUM LIKE A MACHINE. SO
4 INTERRUPTING THAT, IT WOULD NOT JUST BE DISRUPTIVE, IT
5 COULD BE POTENTIALLY DESTRUCTIVE TO A LOT OF THIRD-PARTY
6 BUSINESSES.

7 THE COURT: OKAY. UNDERSTANDING THAT WE
8 HAVE STILL NOT GOT TO THE APPROPRIATE INJUNCTIVE RELIEF,
9 THAT IS THE FINAL STEP, I FIND THAT THE BALANCE OF
10 EQUITIES, HAVING HEARD THE PUBLIC INTEREST AND THE
11 PRIVATE ISSUES, ARE IN FAVOR OF THE GOVERNMENT.

12 SO I DO NOT HAVE A PROPOSED ORDER FROM
13 THE GOVERNMENT. MAYBE YOU FILED IT, I JUST DIDN'T SEE
14 IT.

15 MS. GRIER: YOUR HONOR, WE DID FILE A
16 PROPOSED ORDER AND THEN WE SENT A WORD VERSION TO YOUR
17 DEPUTY CLERK YESTERDAY.

18 THE COURT: OKAY. CAN SOMEONE GET --

19 MS. GRIER: WE CAN MAKE THAT AVAILABLE TO
20 YOU IN ANY WAY THAT YOU WOULD LIKE.

21 THE COURT: IS IT HERE?

22 (DISCUSSION OFF THE RECORD.)

23 THE COURT: I NEED SOMETHING UP HERE ON
24 THE BENCH, AND THEN WE CAN GO FROM THERE.

25 MR. MCAULIFFE: I HAVE A COPY.

1 THE COURT: THIS IS A VERY LONG ORDER.

2 MR. MCAULIFFE: I BELIEVE IT'S JUST THE
3 ORDER, YOUR HONOR.

4 THE COURT: OKAY. THIS WHOLE THING IS
5 THE ORDER?

6 MR. MCAULIFFE: DO YOU MIND IF I TAKE A
7 SECOND LOOK, YOUR HONOR? SOME PAPERS MAY HAVE GOTTEN
8 MIXED UP IN THERE.

9 THE COURT: YOU ATTACHED IT AS
10 EXHIBIT 12.

11 MS. GRIER: YES, YOUR HONOR.

12 THE COURT: I DIDN'T SEE IT AS AN
13 EXHIBIT. OKAY.

14 SO LET US LOOK AT WHAT YOU REQUEST. AND
15 TO TELL YOU THE TRUTH, I AM GOING TO LEAVE YOU HERE ONCE
16 I TELL YOU MY THOUGHTS TO DISCUSS WHAT THIS ORDER IS
17 GOING TO LOOK LIKE.

18 THERE WILL BE AN ASSET FREEZE, BUT IT
19 WILL BE SPECIFICALLY PREMISED ON MAINTAINING THE STATUS
20 QUO AND INSURING THAT THE ASSETS CAN BE LOCATED AND NOT
21 ON THE PRESERVATION OF THE POSSIBILITY OF REDRESS.

22 I AM GOING TO ORDER TO SHOW CAUSE WHY A
23 PRELIMINARY INJUNCTION SHOULD NOT ISSUE, AND GIVEN THAT
24 WE HAVE GOT THE 20 DAYS, MY CALENDAR IS ON THE WEEK OF
25 OCTOBER THE 7TH. I CAN GIVE YOU A DATE THEN. AND YOU

1 TELL ME HOW LONG YOU WOULD NEED FOR THE PRELIMINARY
2 INJUNCTION HEARING.

3 WITH RESPECT TO LIMITED DISCOVERY, WHAT
4 KIND OF LIMITED DISCOVERY WOULD YOU WANT?

5 MS. GRIER: YOUR HONOR, IT'S IN THE
6 ORDER, AND THE TYPE OF LIMITED DISCOVERY IS PROVIDING
7 ANY BUSINESS RECORDS.

8 THE COURT: WHERE DOES IT SPECIFICALLY
9 SAY IT IN THE ORDER?

10 MS. GRIER: IT WOULD BE IN SECTION 19.

11 THE COURT: WHICH IS PAGE WHAT?

12 MS. GRIER: ON PAGE 24. AND THERE IS
13 ALSO AN IMMEDIATE ACCESS PROVISION ON PAGE 25.

14 THE COURT: WE ARE JUST TALKING ABOUT IT
15 BIT BY BIT.

16 OKAY. WHAT YOU ARE GOING TO DO IS LOOK
17 AT THIS, AND I AM CONCERNED ABOUT THOSE -- WELL, NO. I
18 THINK YOU JUST LOOK AT THE PRODUCTION OF BUSINESS
19 RECORDS, TALK ABOUT IT. YOU ARE GOING TO HAVE TO
20 PRODUCE SOME BUSINESS RECORDS. I HAVE NOT -- I DON'T
21 KNOW HOW BROAD THIS IS, BUT I THINK YOU NEED TO TALK
22 ABOUT WHAT WOULD GET THE FDC WHAT IT NEEDS. AND THERE
23 WILL BE A BATTLE, BUT I DON'T WANT THIS TO BE A BATTLE
24 WHERE NOBODY IS GIVING GROUND. BECAUSE THEN I'M GOING
25 TO GET UPSET AND I ALREADY HAD A LONG AND TOUGH TRIAL,

1 AND I AM JUST NOT READY TO HAVE THAT KIND OF BATTLE
2 AGAIN TODAY. SO YOU ARE GOING TO DISCUSS THAT.

3 MS. GRIER: YOUR HONOR, BEFORE YOU GO ON,
4 MAY I ADDRESS A COUPLE OF --

5 THE COURT: I HAVE NOT FINISHED.

6 MS. GRIER: SORRY.

7 THE COURT: BECAUSE WE ARE GOING TO NOW
8 GO TO -- SO WE HAVE GOT ASSET FREEZE IN THE WAY THAT I
9 HAVE DISCUSSED; WE HAVE GOT AN ORDER TO SHOW CAUSE BY A
10 PRELIMINARY INJUNCTION SHOULD ISSUE ON OCTOBER THE 7TH;
11 I THINK THERE IS SOMETHING IN THE ORDER WHICH TALKS
12 ABOUT SERVICE OF THE ORDER, TAKE A LOOK AT THAT
13 TOGETHER; CORRESPONDENCE AND SERVICE OF PLAINTIFF, TAKE
14 A LOOK AT THAT TOGETHER; PRELIMINARY INJUNCTION HEARING,
15 LOOK AT THAT TOGETHER; AND THE BRIEFS AND AFFIDAVITS,
16 TAKE A LOOK AT THAT TOGETHER.

17 YOU SAY IN THE DURATION OF THE ORDER IT
18 SHALL EXPIRE 14 DAYS FROM THE DATE OF THE ENTRY. I
19 THINK THAT ALTHOUGH 65(B)(2) SAYS 14, I THINK THAT THE
20 RULE SAYS 20, RIGHT? IF YOU LOOK AT THE TEMPORARY
21 RESTRAINING ORDER RULE, IT SAYS, IF A COMPLAINT IS NOT
22 FILED WITHIN -- UPON A PROPER SHOWING THAT, WEIGHING THE
23 EQUITIES AND CONSIDERING THE COMMISSION'S LIKELIHOOD OF
24 ULTIMATE SUCCESS, SUCH ACTION WOULD BE IN THE PUBLIC
25 INTEREST, AND AFTER NOTICE TO THE DEFENDANT, A TEMPORARY

1 RESTRAINING ORDER OR A PRELIMINARY INJUNCTION MAY BE
2 GRANTED WITHOUT BOND, PROVIDED, HOWEVER, THAT IF A
3 COMPLAINT IS NOT FILED WITHIN SUCH PERIOD, NOT EXCEEDING
4 20 DAYS, AFTER THE ISSUANCE OF THE TEMPORARY RESTRAINING
5 ORDER, THE ORDER SHALL BE DISSOLVED.

6 SO THAT SUGGESTS THAT DESPITE WHAT THE
7 FEDERAL RULES SAY, THAT 20 DAYS IS MORE APPROPRIATE
8 UNDER FTC, OR AM I READING THIS WRONG?

9 MS. GRIER: YOUR HONOR, MY UNDERSTANDING
10 IS THAT IT IS 14 DAYS, BUT THE COURT CAN ALSO EXTEND TO
11 20 OR MORE, IF THE COURT SO CHOOSES.

12 SO TYPICALLY THERE IS -- THE TRO IS
13 ENTERED --

14 THE COURT: I KNOW THE TRO IS TYPICALLY
15 14, BUT I AM JUST SEEING THIS RULE WHERE IT SUGGESTS
16 THAT MAYBE 20 -- IT SAYS 20 -- OH, NOT EXCEEDING 20.
17 OKAY.

18 SO ANY OBJECTION TO ME -- I THINK OCTOBER
19 THE 7TH IS MAYBE 17. ANY OBJECTION TO THAT?

20 MR. FREELAND: AS LONG AS WE CAN WORK THE
21 DETAILS OUT ON THE REST OF THIS, NO, NO OBJECTION.

22 THE COURT: OKAY. SO YOU ARE GOING TO
23 WORK ON THAT. IF YOU WANT IT EARLIER, I PRETTY MUCH
24 HAVE NO TIME. WE CAN DO IT AT NIGHT, IF NECESSARY. BUT
25 I AM KIND OF GIVING YOU MY BEST DATES POSSIBLE.

1 SO THEN THE LIMITED DISCOVERY WILL BE THE
2 TURN OVER OF BUSINESS RECORDS THAT YOU DISCUSS, RIGHT,
3 IT'S THE SAME THING?

4 MS. GRIER: RIGHT.

5 THE COURT: SO WHATEVER YOU NEED TO DO TO
6 YOUR ORDER TO SAY, THE LIMITED DISCOVERY IS ONLY WHAT IS
7 ORDERED. UNLESS YOU WANT A DEPOSITION, IF YOU WANT A
8 DEPOSITION.

9 MS. GRIER: YOUR HONOR, EXPEDITED
10 DEPOSITIONS ARE INCLUDED, AND THAT'S WHAT WE ARE
11 REQUESTING AS WELL.

12 THE COURT: WHERE IS THAT IN THE ORDER?

13 MS. GRIER: IT'S UNDER PROVISION 22,
14 SECTION 22, EXPEDITED DISCOVERY.

15 THE COURT: WHICH IS PAGE WHAT?

16 MS. GRIER: PAGE 27.

17 YOUR HONOR, I JUST WANT TO CLARIFY
18 SOMETHING. WE ARE ASKING FOR RECEIVER.

19 THE COURT: I UNDERSTAND. I HAVE NOT
20 GOTTEN THERE YET.

21 MS. GRIER: OKAY.

22 THE COURT: OKAY. SO I AM FINE WITH
23 EXPEDITED DISCOVERY. BUT I THINK BEFORE YOU GO INTO
24 EXPEDITED DISCOVERY, YOU ALSO HAVE TO TALK ABOUT -- YOU
25 MIGHT WANT TO INCLUDE IN THE TURN OVER DOCUMENTS WHAT

1 YOU WANT IN DISCOVERY, RIGHT, BECAUSE --

2 MS. GRIER: YES, UNDER THE EXPEDITED
3 DISCOVERY PROVISION, YOU WILL FIND THAT IT'S LIMITED.
4 SO IT'S LIMITED TO CERTAIN TOPICS UNDER THE EXPEDITED
5 DISCOVERY, SO IT'S NOT A WIDE-RANGING DEPOSITION, IT'S
6 LIMITED TO THESE PARTICULAR DEFENDANTS, EACH LOCATION
7 THAT THE DEFENDANT IS AT, IT'S NOT A COMPLETE DISCOVERY
8 REQUEST.

9 THE COURT: OKAY.

10 MS. GRIER: THAT'S WHY I MENTIONED THE
11 RECEIVER, IS BECAUSE --

12 THE COURT: WAIT.

13 MS. GRIER: -- OF THE TURN OVER TO THE
14 RECEIVER.

15 THE COURT: WAIT.

16 SO I AM LOOKING AT THE EXPEDITED
17 DISCOVERY. GIVEN THOSE LIMITATIONS, THAT SEEMS FINE TO
18 ME. IT MIGHT BE FINE-TUNED, AND AGAIN, DON'T FIGHT TOO
19 HARD OVER THAT ONE.

20 THEN I THINK WE ARE GOING INTO -- NOW
21 HERE IS THE TWO THAT I NEED SOME DISCUSSION ON, THE
22 APPOINTMENT OF A TEMPORARY RECEIVER AND IMMEDIATE ACCESS
23 TO THE DEFENDANT'S BUSINESS PREMISES.

24 THE DEFENDANTS HAVE TOLD ME, AND IF YOU
25 WANT ME TO I CAN PUT THE FOUNDER ON THE STAND SO HE CAN

1 TELL US THAT, THAT THERE ARE 250 CUSTOMERS THAT ARE
2 WORKING WITH THE ENTITY. AND THERE IS ALSO A -- SOME
3 SOFTWARE WING OF THE PARTY WHICH IS LIKE A SPOTIFY
4 PLATFORM, WHICH IS SERVICING NOT ONLY A VENN DIAGRAM
5 WITH RESPECT TO THOSE 250, BUT MAY ALSO BE SERVING
6 OTHERS.

7 I AM NOT IN THE BUSINESS OF BRINGING
8 SMALL BUSINESSES TO THEIR KNEES. AND RIGHT NOW, THERE
9 IS NO REASON TO SUPPOSE, PARTICULARLY GIVEN THE
10 STATEMENTS FROM THE CUSTOMERS THAT SOME PEOPLE ARE
11 SATISFIED, THAT THERE ARE NOT, IN FACT, 250 CUSTOMERS
12 THAT ARE SATISFIED, AND THERE IS NOT, IN FACT, ANOTHER
13 WING.

14 SO I AM LOATHE AT THIS POINT TO APPOINT A
15 TEMPORARY RECEIVER, AND I AM ALSO LOATHE, PERHAPS LESS
16 LOATHE, TO ALLOW IMMEDIATE ACCESS TO DEFENDANT'S
17 BUSINESS PREMISES.

18 SO I THINK WHAT THE GOVERNMENT HAS TO
19 PROVIDE ME WITH THEIR BEST CASE, LET'S START WITH THE
20 APPOINTMENT OF RECEIVER, BECAUSE I THINK A LOT OF THINGS
21 FLOW FROM THERE.

22 MS. GRIER: YES, YOUR HONOR.

23 APPOINTMENT OF A RECEIVER IS ABSOLUTELY
24 NECESSARY IN THIS CASE AND PREVENTS THE DEFENDANT FROM
25 HIDING DOCUMENTS AND RAIDING THE BUSINESS. ALSO, IT

1 ALLOWS FOR AN ORDERLY CONTINUATION OF THE BUSINESS
2 DURING THE TEMPORARY RESTRAINING ORDER.

3 SO I WANTED TO ADDRESS FIRST THE
4 STOREFUNNELS.NET. WE ARE VERY WELL AWARE OF THAT, AND
5 WE ARE VERY CAREFUL, PERSONALLY AND IN PREVIOUS CASES
6 THAT I HAVE BROUGHT, OF MAKING SURE THAT IF THERE IS ANY
7 SORT OF LEGITIMATE BUSINESS OPERATION THAT IS CONTINUING
8 ON THAT WE ARE NOT INTERFERING WITH THAT. SO THIS IS
9 SOMETHING THAT WE CAREFULLY CONSIDERED BEFORE WE BROUGHT
10 THIS CASE ABOUT THE STOREFUNNELS AND THE SOFTWARE THAT
11 WAS PROVIDED.

12 IN THAT SITUATION, THE RECEIVER WOULD NOT
13 GO IN AND STOP THE COMPANY FROM OPERATING. THE COMPANY
14 WOULD -- THE RECEIVER'S JOB IS TO ENSURE THE COMPANY IS
15 OPERATING LAWFULLY AND PROPERLY. IT'S NOT TO GO IN AND
16 SHUT IT DOWN.

17 SO IF THERE IS LEGITIMATE BUSINESS GOING
18 ON, I DON'T THINK THAT THERE IS, BUT IF THERE IS
19 LEGITIMATE BUSINESS GOING ON, THE RECEIVER CAN GO IN AND
20 ENSURE THAT THAT CONTINUES. THE RECEIVER'S ROLE IS TO
21 ENSURE THAT THE BUSINESS IS NOT BEING, YOU KNOW, USED TO
22 PERPETUATE A FRAUD. AND ALSO THAT THE RECEIVER CAN
23 LOCATE THE ASSETS IN A WAY THAT SOMEBODY WHO IS NOT
24 APPOINTED BY THE COURT COULD NOT. THE RECEIVER IS ABLE
25 TO LOCATE BUSINESS RECORDS; THE RECEIVER WOULD BE ABLE

1 TO HAVE AN ORDERLY CONTINUATION OF THE BUSINESS DURING
2 THE TRO AND WOULD MAKE RECOMMENDATIONS TO THE COURT
3 ABOUT WHETHER OR NOT AND HOW BY WAY THE BUSINESS COULD
4 BE CONTINUED LAWFULLY AND PROPERLY.

5 SO IT'S VERY IMPORTANT IN A CASE LIKE
6 THAT, THIS WHERE IT'S COMPLETELY PERMEATED BY FRAUD,
7 THAT THE DEFENDANT NOT CONTINUE IN THE CLAIMS. WE HAVE
8 ADDITIONAL DECLARATIONS THAT WE CAN SUBMIT TO THE COURT.
9 THIS HAS BEEN CONTINUING THIS WEEK, OF POSTING VIDEOS
10 AND CONTINUOUSLY MAKING THESE EARNINGS CLAIMS AND
11 CONTINUOUSLY MAKING THESE SALES PITCHES.

12 SO WITHOUT A RECEIVER IN PLACE, IT'S VERY
13 DIFFICULT TO ENSURE THAT THE FRAUD WILL NOT CONTINUE AND
14 BE PERPETUATED. ALSO, THE SEVERANCE ENSURES THAT -- SO
15 WHEN THE RECEIVER TAKES OVER, ENSURES THAT BUSINESS
16 EXPENSES TO THE EXTENT THAT THEY ARE LEGITIMATE AND HAS
17 AN ORDERLY PAYMENT OF BUSINESS EXPENSES.

18 NOW, THE RECEIVER IS APPOINTED BY THE
19 COURT, SO I CANNOT MAKE REPRESENTATIONS ABOUT WHAT STEPS
20 THE RECEIVER IS GOING TO TAKE ONCE THE RECEIVER TAKES
21 OVER A BUSINESS. BUT I CAN TELL YOU THAT THAT IS PART
22 OF THEIR ROLE IS ENSURING THAT CONSUMERS ARE NOT -- YOU
23 KNOW, CONTINUOUS VICTIMIZATION. THAT'S A BIG PART OF A
24 RECEIVERSHIP IS TO MAKE SURE THAT THERE IS NOT ONGOING
25 VICTIMIZATION OF CONSUMERS.

1 NOW, WHEN IT COMES TO THE
2 STOREFUNNELS.NET, THE SOFTWARE PROGRAM THAT IS BEING
3 USED, IT'S CONNECTED TO THE ECOMMERCE STORES SO THAT
4 THEY CAN ACTUALLY HAVE TRANSACTIONS WITH THE BUSINESS.

5 SO THERE IS NOTHING IN THE ORDER THAT
6 WOULD PREVENT THAT FROM HAPPENING AND FROM THE
7 BUSINESSES TO CONTINUE UNDER THE ORDER. SO THERE IS
8 NOTHING THERE THAT WOULD SAY THAT THEY HAVE TO HALT THE
9 CONSUMERS. THE CLIENT STORES ARE INDEPENDENTLY SEPARATE
10 FROM THE SYSTEM, MEANING THAT THEY ARE UNDER THE LOGINS
11 AND NAMES OF THE INDIVIDUALS WHO SET UP THE STORES. SO
12 THAT WOULD NOT HARM THEIR STORES EITHER.

13 SO OUR POSITION IS THAT A RECEIVERSHIP IS
14 EXTREMELY IMPORTANT TO HALTING THE CONTINUED FRAUD, BUT
15 ALSO TO ENSURE THAT THE CONSUMERS ARE NOT VICTIMIZED
16 FURTHER BY THE DEFENDANT.

17 THE COURT: OKAY. LET'S HEAR FROM
18 DEFENSE ON THAT.

19 MR. FREELAND: THANK YOU, YOUR HONOR.

20 IT'S THE POINT THAT MS. GRIER ADMITTED,
21 WHICH IS SHE CANNOT SPEAK FOR WHAT THE RECEIVER IS GOING
22 TO DO. THERE IS NO EVIDENCE THAT ANY OF THESE 250 ARE
23 DISPLEASED, ARE UNSATISFIED, AND THAT THE SOFTWARE IS
24 NOT WORKING FOR THEM AND THAT THE ONGOING CONSULTING
25 SERVICES THAT THEY ARE RECEIVING FROM THE DEFENDANTS,

1 THEY ARE NOT BENEFITING FROM.

2 AS I SAID BEFORE, WE ARE WILLING -- AND
3 THE ADS THAT SHE JUST REFERENCED, YOUR HONOR, BY THE
4 WAY, THIS CASE WAS FILED WEDNESDAY AFTERNOON. AN
5 IMMEDIATE REACTION TO THAT AND WITHOUT ANY ADMISSION OF
6 LIABILITY, JUST AS PRECAUTIONARY MEASURE, ALL OF THE
7 CONSUMER-FACING ADS CAME DOWN.

8 THE COURT: SO THERE'S NOTHING ON
9 INSTAGRAM, NOTHING ON FACEBOOK, NOTHING ON X, NOTHING ON
10 YOUTUBE.

11 MR. FREELAND: SO THE WAY THAT SOCIAL
12 MEDIA WORKS, YOUR HONOR, IS YOU HAVE ACTIVE ADS AND THEN
13 EACH ADVERTISER HAS LIKE A LIBRARY THAT THE SOCIAL MEDIA
14 OUTLET STORES. BUT YOU HAVE TO ACTUALLY GO AND LOOK TO
15 FIND THAT. IT'S LIKE LOOKING UP A WORD IN THE
16 DICTIONARY. IN TERMS OF WHAT WE WILL CALL ACTIVE
17 TRAFFIC, IN OTHER WORDS HERE IS THIS INSTAGRAM AD THAT
18 IS OFFERING BUSINESS COACHING AND CONSULTING AND IT'S
19 GOING TO POP UP ON SOMEONE'S INSTAGRAM FEED, THAT
20 STOPPED. ALL OF THAT STOPPED. AND WE HAVE AGREED TO
21 ENTER INTO AN ORDER, FOR AT LEAST THE TRO PURPOSES, THAT
22 WOULD KEEP THE ADS DOWN. SO THE ISSUE -- SO THERE IS NO
23 ISSUE WITH THE RECEIVER ON THAT PART.

24 THE REAL ISSUE WITH THE RECEIVER IS THIS
25 IS ALL VERY HIGHLY TECHNICAL STUFF. AND IF THE RECEIVER

1 COMES IN AND JUST SAYS, I THINK ALL OF THIS IS UNLAWFUL,
2 IT'S ALL SWEEPED IN. NOW ALL OF THESE BUSINESSES ARE OUT,
3 BUSINESSES WHERE THERE HAS BEEN NO EVIDENCE OF ANY
4 DISSATISFACTION WHATSOEVER.

5 THE COURT: OKAY. SO THIS IS WHERE YOUR
6 NEGOTIATING IS GOING TO TAKE PLACE, BECAUSE I THINK MOST
7 OF THE OTHER THINGS ARE JUST LIKE THIS IS THE ORDER,
8 THIS IS HOW IT'S GOING TO WORK.

9 WITH THE RECEIVER, I WILL APPOINT A
10 RECEIVER, BUT MY MAIN CONCERN IS I DON'T WANT THOSE ADS
11 TO CONTINUE TO BE PLAYED ANYWHERE. I DON'T KNOW HOW
12 THAT WORKS, HOW TO TAKE IT DOWN, BUT I DON'T KNOW WHAT
13 YOU ARE TALKING ABOUT WHEN YOU SAY THERE IS A LIBRARY.
14 BUT THERE SHOULD BE NO EFFORT WHATSOEVER TO CONTINUE TO
15 GET NEW CONSUMERS INTO THIS BUSINESS, AT LEAST UNTIL WE
16 GET TO THE PRELIMINARY INJUNCTION. SO THAT WOULD BE THE
17 RECEIVER'S JOB.

18 BUT THEN HOW YOU CARVE OUT CONTINUING TO
19 SERVICE THESE 250 CUSTOMERS, AND I ASSUME THAT DEFENSE
20 WOULD BE ABLE TO TELL THE GOVERNMENT WHO THESE 250
21 CUSTOMERS ARE AND WOULD ALSO BE ABLE TO TELL THE
22 GOVERNMENT WHICH CUSTOMERS IN ADDITION TO THOSE 250 ARE
23 USING THE SOFTWARE, THE STOVE -- WHATEVER IT IS
24 CALLED -- ARE USING THAT SOFTWARE. I THINK THAT'S
25 SOMETHING THE RECEIVER SHOULD AND THE DEFENDANT SHOULD

1 ENGAGE -- WE NEED TO GET THAT INFORMATION ASAP, RIGHT?
2 THAT'S LIKE THE NUMBER ONE THING. I THINK A COMPLIANCE
3 WITH SECTION 5 WOULD BE A GOOD THING TO INCLUDE IN
4 THERE. I THINK TAKING DOWN CONSUMER-FACING ADS AND
5 MAKING SURE THAT THEY ARE NOT SHOWN ANYWHERE AND NOT
6 ACCESSIBLE ANYWHERE IS ANOTHER THING.

7 BUT I THINK THAT YOU HAVE TO WORK ON IT.
8 BECAUSE I'M NOT GOING TO JUST SIGN OFF ON EVERYTHING
9 THAT THE GOVERNMENT WANTS. I THINK WE NEED TO HAVE IT
10 TAILORED TO THE BUSINESS NEEDS, UNDERSTANDING THAT HOW I
11 VIEW THE BUSINESS NEEDS, WHICH IS THIS VERY SMALL COHORT
12 OF EXISTING SATISFIED CUSTOMERS.

13 SO I AM GOING TO LEAVE YOU TO WORK ON IT.
14 YOU HAVE GOT THE WORD VERSION. AND YOU CAN CONTACT MY
15 CHAMBERS. I THINK YOU HAVE CHAMBERS NUMBER, YOU CAN
16 CALL. ALSO NELSON IS THERE AND NELSON CAN GIVE YOU HIS
17 TELEPHONE NUMBER, SO YOU CAN CALL HIM, AND JUST WORK IT
18 OUT.

19 AS I SAID, IT IS NOT A TIME TO DO BATTLE.
20 IT IS A TIME TO UNDERSTAND HOW TO PROCEED, GIVEN THE
21 FACT THAT I HAVE GRANTED THE TRO, AND GIVEN EVERYTHING
22 THAT I HAVE SAID IN THIS HEARING, IT'S HOW BEST TO DO
23 IT, UNDERSTANDING THAT I DON'T WANT TO IMPOSE MY
24 UNEDUCATED VIEW ON THIS SITUATION BECAUSE, HAVING HAD
25 THIS HEARING, I AM NOT IN THE BEST POSITION TO IMPOSE

1 SOMETHING. I UNDERSTAND THAT THE GOVERNMENT THINKS THAT
2 THEY ARE RIGHT AND THAT THEY SHOULD GET EVERYTHING THAT
3 THEY WANT. I UNDERSTAND THAT THE DEFENDANT THINKS THAT
4 IT IS RUNNING A LEGITIMATE BUSINESS AND THEREFORE IT
5 SHOULD NOT HAVE THESE PROVISIONS IMPOSED ON IT. BUT
6 THEY HAVE BEEN BECAUSE THE GOVERNMENT HAS MET ITS BURDEN
7 IN THIS TRO. AND SO THEREFORE ANY NEGOTIATION HAS TO
8 RECOGNIZE THAT.

9 OKAY? THANK YOU.

10 (RECESS TAKEN.)

11 (CLERK OPENS COURT.)

12 THE COURT: YOU HAVE BEEN HARD AT WORK.
13 HAVE YOU COME UP WITH AN AGREEMENT?

14 MS. GRIER: NO, YOUR HONOR.

15 YOUR HONOR, WE ATTEMPTED TO NEGOTIATE AN
16 AGREEMENT WITH DEFENSE COUNSEL, BUT WE ARE UNABLE TO DO
17 SO. THERE SEEMS TO BE AN FUNDAMENTAL MISUNDERSTANDING
18 ABOUT THE COURT'S ORDER WITH RESPECT TO ASSET FREEZE AND
19 THE RECEIVERSHIP. AND SO WE ARE LOOKING TO THE COURT'S
20 DIRECTION REGARDING THE ASSET FREEZE AND THE
21 RECEIVERSHIP.

22 SO WE UNDERSTAND YOU DIDN'T HAVE AN
23 OPPORTUNITY TO REVIEW THE FULL ORDER BEFORE OUR
24 DISCUSSION. IF I MISUNDERSTOOD, I AM SORRY. BUT WE
25 ATTEMPTED TO HAVE SOME DISCUSSIONS ABOUT SOME OF THE

1 PROVISIONS OF THE ORDER.

2 ONE THING THAT WE WERE ABLE TO OFFER IS
3 THAT IF THERE IS IMMEDIATE ACCESS TO THE BUSINESS, THERE
4 IS NO BUSINESS LOCATION IS WHAT THEY HAVE REPRESENTED.
5 AND WE ARE WILLING TO ACCEPT THEIR REPRESENTATION AT
6 THIS TIME BECAUSE OUR INVESTIGATION ON THE LOCATION
7 SEEMED TO CONFIRM THAT.

8 THE COURT: OKAY.

9 MS. GRIER: BUT WE ARE WILLING TO ADD
10 INTO THE COURT ORDER THAT THE RECEIVER WILL NOT ENTER
11 THE PERSONAL RESIDENCE OF THE INDIVIDUALS, AND THAT THE
12 RECEIVER WOULD RECEIVE THE TURN OVER OF THE BUSINESS
13 DOCUMENTS OR THE TURN OVER OUTSIDE OF THE DEFENDANT'S
14 PERSONAL RESIDENCE. AND --

15 THE COURT: JUST TELL ME THE AREAS THAT
16 YOU CAN'T AGREE TO.

17 MS. GRIER: I AM NOT UNDERSTANDING -- I
18 HAVE TO SAY THAT WHAT THEY THINK THAT PRESERVING THE
19 STATUS QUO MY UNDERSTANDING IS IS THEY THINK THEY CAN
20 PRESERVE THE STATUS QUO OF THE ASSET FREEZE MEANS THAT
21 THE DEFENDANT CAN CONTINUE TO SPEND MONEY FOR LIVING
22 EXPENSES --

23 THE COURT: NO.

24 MS. GRIER: -- OR THE DEFENDANT CONTINUE
25 TO SPEND BUSINESS MONEY.

1 THE COURT: NO. ASSET FREEZE IS ASSET
2 FREEZE.

3 MS. GRIER: RIGHT. SO THAT'S A
4 FUNDAMENTAL PROBLEM THAT WE WERE HAVING.

5 THE COURT: THAT PROBLEM IS RESOLVED.
6 ASSET FREEZE, NO MONEY. IF THE RECEIVER COMES IN AND
7 DETERMINES THAT IT'S -- OR IS PERSUADED THAT THERE NEEDS
8 TO BE SOME ASSET OUTLAY ON PARTICULAR EXPENSES, THEN YOU
9 CAN COME BACK TO ME AND MAKE THAT RECOMMENDATION, OKAY.

10 IS THAT THE ONLY ISSUE?

11 MR. FREELAND: IF I MAY, YOUR HONOR?

12 THE COURT: GO AHEAD.

13 MR. FREELAND: AGAIN, I AM VERY
14 EXHAUSTED. WHAT I UNDERSTOOD THE COURT WAS DOING TODAY
15 WAS LOOKING AT THE REQUESTED INJUNCTIVE RELIEF THAT WE
16 TALKED ABOUT AT THE OUTSET THIS MORNING UNDER SECTION 5
17 AND AMG. AND WHAT I THOUGHT I HEARD WAS THIS WAS A --
18 THIS WAS NOT GOING TO BE AN ORDINARY ASSET FREEZE BUT A
19 STATUS QUO ASSET FREEZE, AND I MUST JUST HAVE
20 MISINTERPRETED THAT WHAT MEANT.

21 THE COURT: WHAT IT MEANS IS THAT THE
22 REASON UNDER PINNING THE ASSET FREEZE IS NOT IN ORDER TO
23 MAKE SURE THAT MONEY CAN BE MAINTAINED TO PAY OUT
24 INDIVIDUALS WHO MAY HAVE BEEN HARMED OR WHOSE MONEY IT
25 IS. IT IS BECAUSE -- IT IS TO MAINTAIN THE STATUS QUO.

1 IT WAS SIMPLY A REASON FOR IMPOSING THE ASSET FREEZE, IT
2 WAS NOT A LIMITATION ON THE ASSET FREEZE.

3 MR. FREELAND: UNDERSTOOD, THANK YOU,
4 YOUR HONOR.

5 JUST A COUPLE OF OTHER POINTS. WE HAVE
6 RAISED THAT THERE IS REFERENCES TO THE BUSINESS
7 OPPORTUNITY RULE HERE, THERE IS FINDINGS IN HERE ABOUT
8 THAT, AND --

9 THE COURT: OKAY. I FOUND NOTHING ON THE
10 BUSINESS OPPORTUNITY RULE, SO THAT SHOULD BE TAKEN OUT?

11 MR. FREELAND: SOME OF IT. AND AGAIN, I
12 COULD BE WRONG, YOUR HONOR, BUT I THINK THAT WHAT I
13 HEARD YOU SAY WAS YOU HAVE NOT READ THE WHOLE ORDER BUT
14 YOU WERE NOT GOING TO ENTERED EXACTLY WHAT THEY PROVIDED
15 TO YOU. SOME OF THEIR FINDINGS MAKE IT SOUND LIKE IT'S
16 LAW OF THE CASE.

17 THE COURT: LET ME SEE THE FINDINGS.
18 HAVE I GOT THIS THING? YES, I DO.

19 OKAY WHAT PAGE?

20 MR. FREELAND: SO YOUR HONOR, ON PAGE 1,
21 WE HAVE JUST ONE REFERENCE THAT YOUR HONOR CONSIDER OUR
22 OPPOSITION AND ARGUMENT BEFORE WE GET TO SUB A ON THE
23 FINDINGS.

24 IN B, IT JUST SOUNDS LIKE --

25 THE COURT: IF YOU SAY SOMETHING, YOU

1 HAVE TO GIVE ME A PAGE NUMBER AND GIVE ME AN EXACT
2 REFERENCE.

3 MR. FREELAND: YES. PAGE 2, SECTION B.

4 THE COURT: OKAY.

5 MR. FREELAND: AGAIN, THERE IS A -- THIS
6 SOUNDS LIKE --

7 THE COURT: TAKE ALL OF THE STUFF ABOUT
8 -- YOU JUST SAY, THE COURT HAVING AN OPEN COURT GRANTED
9 A TRO PURSUANT TO SECTION 5(A) OF THE FDC ACT, 15 U.S.C.
10 45(A) AND ALSO REFERS TO THE INJUNCTION PROVISION, THAT
11 IT'S NOT FINDINGS OF FACT.

12 ANYTHING ELSE?

13 MR. FREELAND: SO I UNDERSTAND, YOUR
14 HONOR, ON THE ASSET FREEZE -- AND THANK YOU FOR THE
15 CLARIFICATION. ON THE ROLE OF THE RECEIVER, OBVIOUSLY
16 THERE IS A COOPERATION CLAUSE IN THE TRO.

17 THE COURT: WHICH PAGE?

18 MR. FREELAND: I'M SORRY, YOUR HONOR, MY
19 APOLOGIES. SO --

20 MS. GRIER: IF I MAY, YOUR HONOR, PAGE
21 21.

22 THE COURT: PAGE 21.

23 MS. GRIER: SECTION 15.

24 THE COURT: OKAY.

25 MR. FREELAND: SO WE JUST WANT TO -- AND

1 YOUR HONOR, THERE'S AN EARLIER PROVISION THAT -- BACK ON
2 PAGE 14. I GUESS, YOUR HONOR -- I GUESS I HAVE A
3 REQUEST FOR THE COURT, WHICH IS WHAT IS IT THAT YOU WERE
4 ENVISIONING, LIKE, THE RECEIVER HAVING THE AUTHORITY TO
5 DO? I KNOW THAT YOU SAID --

6 THE COURT: OKAY. SO I WAS HOPING YOU
7 WOULD BE -- YOU HAVE TO BE ABLE TO FIGURE OUT WHAT I
8 SAID, AND I THOUGHT IT WAS FAIRLY CLEAR.

9 THE RECEIVER HAS TO COME IN. THE
10 RECEIVER SHOULD NOT COME IN AND SHUT EVERYTHING DOWN
11 NECESSARILY. OBVIOUSLY WE HAVE GOT AN ASSET FREEZE.
12 THE RECEIVER SHOULD TAKE A LOOK AT EVERYTHING, SHOULD
13 LOOK AT THOSE 250, SHOULD LOOK AT THE SOFTWARE,
14 DETERMINE WHETHER THERE IS, IN HIS OR HER, A REAL
15 BUSINESS OPERATION GOING ON AND SHOULD MAKE A
16 RECOMMENDATION THROUGH -- TO THE COURT THROUGH WHATEVER
17 PROCESS IS IN THIS AGREEMENT, THAT I SHOULD AMEND THE
18 ORDER TO ALLOW WHATEVER IT IS THE RECEIVER SAYS TO MOVE
19 FORWARD WITH RESPECT TO THAT SMALL COHORT.

20 THE POINT WAS THAT I NEED TO HAVE AN OUT
21 SO THAT IF TO THE EXTENT THERE IS A LEGITIMATE BUSINESS
22 OPERATION, THAT LEGITIMATE BUSINESS OPERATION HAS TO GO
23 AHEAD, SO IT DOES NOT HARM THE CONSUMERS WHO MAY BE
24 LEGITIMATE CUSTOMERS.

25 SO REALLY THE WAY I SEE IT IS THAT YOU

1 APPOINT THE RECEIVER, THE RECEIVER IMMEDIATELY -- WELL,
2 FIRST OF ALL, THE ASSETS ARE FROZEN AND THEN IT IS THE
3 RECEIVER'S JOB VERY QUICKLY IS TO LOOK AT -- AND
4 DEFENDANT AS TO HELP THERE IS TO SORT OF LOOK AT WHAT
5 THE DEFENDANT'S SAYS ARE LEGITIMATE BUSINESS OPERATIONS.
6 AND WE ARE NOT GOING BEYOND NOW THE 250 PLUS THOSE
7 OTHERS THAT MAY BE ON THE SOFTWARE PLATFORM AND SAY,
8 LOOK, WHAT CAN WE DO TO ALLOW THE COMPANY TO CONTINUE TO
9 SERVICE THAT COHORT, THAT'S IT. THAT IS THE ONLY CARVE
10 OUT. EVERYTHING ELSE IS THE RECEIVER GOES IN AND DOES
11 WHAT THEY NEED TO DO, OKAY?

12 MR. FREELAND: UNDERSTOOD, YOUR HONOR.

13 AND I KNOW THAT YOU JUST SAID -- MR.
14 PRUSINOWSKI HAS TWO SMALL CHILDREN, 2 AND 4. ONE IS
15 HEARING DISABLED. AS I UNDERSTAND YOUR HONOR'S ORDER,
16 HE CAN'T GO OUT AND BUY A GALLON OF MILK ON HIS WAY HOME
17 TODAY.

18 SO I WOULD ASK FOR SOME SORT OF INTERIM
19 RELIEF.

20 THE COURT: BECAUSE WHAT? HIS BUSINESS
21 ASSETS ARE NOT DIFFERENT FROM HIS PERSONAL ASSETS?

22 MR. FREELAND: NO, HE HAS PERSONAL
23 ASSETS. BUT IS YOUR ASSET FREEZE JUST GOING TO BE FOR
24 THE CORPORATE ASSETS?

25 THE COURT: THAT'S ALL YOU ASKED FOR,

1 RIGHT?

2 MS. GRIER: WE ARE ASKING FOR AN ASSET
3 FREEZE FOR THE INDIVIDUAL ASSETS AND THE CORPORATE
4 ASSETS AS WELL. BECAUSE HE HAS USED THE CORPORATE
5 ASSETS FOR HIS PERSONAL USE. HE ALSO HAS INDIVIDUAL AND
6 PERSONAL KNOWLEDGE AND DIRECTLY PARTICIPATED, SO HE
7 PERSONALLY --

8 THE COURT: WHAT DO YOU NORMALLY DO? I'M
9 SURE DO YOU THIS ALL THE TIME, RIGHT?

10 MS. GRIER: WE WOULD CONSENT TO A CERTAIN
11 AMOUNT OF MONEY THAT COULD BE RELEASED FROM THE ASSET
12 FREEZE. TYPICALLY WHAT DEFENSE COUNSEL WOULD DO IS THEY
13 WOULD COME TO THE COURT AND ASK FOR A RELEASE OF CERTAIN
14 AMOUNT OF FUNDS.

15 THE COURT: SO IT SEEMS TO MAKE SENSE TO
16 VERY QUICKLY TALK ABOUT WHAT IT -- SO HOW MUCH IS THE
17 MORTGAGE PAYMENT; HOW MUCH IS THE CARS; HOW MUCH DOES HE
18 NEED TO BUY HIS GROCERIES. AND COME UP WITH A SCHEDULE
19 WHICH THE -- AND I'M JUST SPIT BALLING HERE RIGHT NOW,
20 BECAUSE YOU HAVE DONE THIS BEFORE SO YOU KNOW HOW THIS
21 WORKS. BUT ESSENTIALLY, HE IS GOT TO KEEP LIVING, HE
22 HAS TO KEEP FEEDING HIS FAMILY AND WHAT HAVE YOU. BUT
23 ALSO TO THE EXTENT THAT YOU DON'T WANT, TO THE EXTENT
24 THAT HE HAS CO-MINGLED ASSETS AND TO THE EXTENT THAT HE
25 IS -- THERE IS ACTIVITY GOING ON WHICH WOULD BE

1 INAPPROPRIATE, YOU WANT TO PROTECT AGAINST THAT
2 HAPPENING AGAIN.

3 SO I AM SURE THIS HAS HAPPENED BEFORE,
4 RIGHT?

5 MS. GRIER: YES.

6 SO THE NORMAL COURSE IS ABSENT THE ASSET
7 FREEZE AND THE TRO IS ENTERED, DEFENSE COUNSEL WOULD PUT
8 A MOTION BEFORE THE COURT ASKING FOR RELEASE OF CERTAIN
9 FUNDS AND JUSTIFYING WHY THEY WOULD NEED A RELEASE OF
10 CERTAIN FUNDS WHICH WOULD BE THINGS LIKE LIVING EXPENSES
11 OR FOR ATTORNEY'S FEES. AND THAT'S USUALLY SOMETHING
12 THAT THE DEFENDANT WILL DETERMINE FOR THEMSELVES WHAT
13 THEY THINK IS APPROPRIATE AND THEY WOULD PUT THAT BEFORE
14 THE COURT. AND THEN THE COURT WOULD MAKE A
15 DETERMINATION ON WHETHER THAT WAS AN APPROPRIATE REQUEST
16 AND RELEASE OF FUNDS.

17 THE COURT: DOES THAT SOUND GOOD TO YOU?

18 OKAY. HERE IS THE DEAL. 500 BUCKS. 500
19 BUCKS WHICH ARE OUTSIDE OF THE FREEZE FOR YOU TO DO
20 THINGS LIKE TO BUY THE MILK.

21 AND I AM ASSUMING THAT I WILL HAVE
22 PROBABLY FAIRLY EARLY ON BEGINNING OF NEXT WEEK SOME
23 KIND OF INDICATION AS TO WHAT THESE EXPENSES ARE AND I
24 AM ASSUMING YOU WOULD WORK TOGETHER SO IT WILL BE AN
25 UNOPPOSED MOTION.

1 MS. GRIER: YOUR HONOR, I CAN TODAY, IF
2 THE COURT WANTS TO RELEASE 5,000 IN THE ORDER TO PROVIDE
3 FOR LIVING EXPENSES, WE CAN DO THAT AS WELL EVEN WITHOUT
4 A MOTION FROM DEFENSE COUNSEL.

5 THE COURT: WORK ON THAT.

6 MS. GRIER: WE CAN -- WE AGREED TO PUT
7 THAT IN THE ORDER. IT WOULD BE UNDER THE ASSET FREEZE
8 AGREEMENT. WE COULD DO IT WHERE TO COURT RELEASES THE
9 ORDER, OR WE CAN HAVE A MOTION.

10 THE COURT: WHATEVER WORKS BEST. IF IT'S
11 IN THE ORDER, YOU CAN PUT IT IN THE ORDER. THAT MEANS I
12 ONLY HAVE TO SIGN ONE THING AND IT'S ONLY IN ONE PLACE.

13 AFTER THAT 5,000, IS IT A ONE-TIME
14 RELEASE?

15 MS. GRIER: FOR THE PENDENCY OF THE TRO
16 AND THEN WE WOULD HAVE A PRELIMINARY INJUNCTION. IT'S
17 TYPICALLY WHERE THE DEFENSE COUNSEL PUTS FORTH A REQUEST
18 TO THE COURT. AND WHAT WE ARE SAYING IS WE WOULD NOT
19 CONTEST A REQUEST TO THE COURT FOR 5,000 IN LIVING
20 EXPENSES.

21 THE COURT: I KNOW, BUT --

22 MS. GRIER: IT'S EASIER, JUST WHEN WE ARE
23 PUTTING THE ASSET FREEZE IN PLACE TO HAVE THEM SEPARATE
24 SO TO HAVE THE TRO WITH THE ASSET FREEZE AND THEN HAVE
25 AN ADDITIONAL ORDER THAT IS SEPARATE FROM THE ASSET

1 FREEZE SAYING THAT THE FUNDS ARE RELEASED --

2 THE COURT: LET'S DO IT THIS WAY. YOU
3 HAVE THE ORDER. YOU ARE GOING TO HAVE AN ORDER WHICH I
4 WILL SIGN TODAY AND YOU GUYS ARE GOING TO DRAFT WHICH
5 SAYS 5,000 RELEASE NOW AND THEN YOU ARE GOING TO HAVE IN
6 THE -- EITHER IN A SEPARATE -- PROBABLY IN THE TRO ORDER
7 SAYING SOMETHING LIKE, THE DEFENDANTS ARE ENTITLED TO
8 PROVIDE TO THE RECEIVER LIVING -- A DETAILED ITEMIZATION
9 OF LIVING EXPENSES. AND THAT SHALL BE PROVIDED TO THE
10 COURT IN THE FORM OF A MOTION AS SOON AS POSSIBLE.

11 AND THEN ONCE THAT IS DONE, AND THIS WILL
12 NOT BE IN THE ORDER, BUT I WOULD EXPECT THE PARTIES
13 WOULD WORK TOGETHER SO THAT I DON'T HAVE TO EVALUATE
14 OPPOSITION TO THEIR MOTION. OBVIOUSLY IF HE SAYS IT
15 COST A MILLION BUCKS A MONTH TO LIVE, THEN YOU ARE GOING
16 TO OPPOSE IT.

17 I AM ASSUMING THAT YOU ARE GOING TO COME
18 UP WITH RATIONAL, REASONABLE EXPENSES PREMISED ON WHAT
19 HE NEEDS TO DO TO KEEP GOING.

20 AND THEN YOU ARE GOING TO AGREE TO IT.

21 MS. GRIER: RIGHT. AND I CAN SAY TODAY
22 THAT I HAVE AUTHORIZATION TO CONSENT TO 5,000 --

23 THE COURT: OKAY.

24 MS. GRIER: -- RELEASE.

25 THE COURT: OKAY.

1 MR. FREELAND: AND -- SORRY.

2 MS. GRIER: SORRY.

3 AND, YOUR HONOR, JUST SO I AM CLEAR
4 WITHIN THE TRO, SO WE WOULD HAVE THE TRO WITH THE
5 PROVISION -- ASSET FREEZE PROVISION AS IT STANDS, AND
6 THEN WE WILL PROVIDE A PROPOSED ORDER FOR RELEASE THAT
7 IS SEPARATE FROM THE TRO.

8 THE COURT: AS IT STANDS, AS YOU HAVE
9 NEGOTIATED, RIGHT? THEN YOU ARE GOING TO HAVE THAT
10 SEPARATE ORDER, WHICH IS THE RELEASE.

11 MS. GRIER: RIGHT.

12 THE COURT: AND I WILL SIGN ONE FIRST AND
13 THEN -- WELL, WE WILL DOCKET IT. SO WILL I SIGN THE TRO
14 ORDER FIRST AND THEN THE RELEASE SECOND.

15 MS. GRIER: OKAY.

16 THE COURT: ANYTHING ELSE?

17 MR. FREELAND: I DON'T THINK SO, YOUR
18 HONOR.

19 THE COURT: OKAY. IN 25 MINUTES I AM
20 GOING INTO FINAL PRETRIAL CONFERENCE. IF YOU NEED ME TO
21 BREAK INTO THAT BECAUSE YOU HAVE AN AGREEMENT AND YOU
22 WOULD LIKE ME TO SIGN IT BECAUSE I THINK IT'S IMPORTANT
23 WE GET THIS ON THE DOCKET TODAY. THE FEDERAL COURT
24 FOLKS DON'T STAY.

25 WHEN DO WE THINK WE WILL HAVE THIS READY

1 TO GO?

2 MS. GRIER: YOU KNOW, YOUR HONOR, I THINK
3 I CAN DRAFT THE PROPOSED ORDER BASED ON WHAT HAS JUST
4 BEEN SAID WITHIN 30 MINUTES.

5 THE COURT: OKAY.

6 MS. GRIER: THE ONLY THING IS I JUST NEED
7 TO MAKE SURE I HAVE THE CORRECT LANGUAGE FOR THE ASSET
8 FREEZE RELEASE. I DON'T SEE WHY WE CAN'T HAVE IT WITHIN
9 30 MINUTES.

10 THE COURT: OKAY. AS SOON AS YOU HAVE IT
11 AND YOU BOTH AGREED, ASK THAT I COME BACK INTO THE
12 COURTROOM AND WE WILL GET IT DONE THEN.

13 (DISCUSSION OFF THE RECORD.)

14 MR. FREELAND: YOUR HONOR, AT THE RISK OF
15 STATING THE OBVIOUS, I WANT TO MAKE SURE THE RECORD IS
16 CLEAR.

17 WHILE WE WILL, OF COURSE, WORK WITH FTC
18 COUNSEL TO COME TO AGREEMENT ON WHAT YOUR HONOR'S RULING
19 ENCOMPASSES, WE OBVIOUSLY PRESERVE OUR APPEAL AND OBJECT
20 TO IT AND ALL OF THAT. I WANT TO MAKE SURE THE RECORD
21 IS CLEAR.

22 THE COURT: THAT'S WHAT YOU ARE GOING TO
23 DO WHEN WE GET BACK ON THE RECORD, YOU ARE GOING TO TELL
24 ME EXACTLY WHAT WE DID AND TELL ME WHY YOU DID IT AND
25 THEN YOU ARE GOING TO SAY, I ASSUME THAT IN YOUR

1 PRELIMINARY INJUNCTION HEARING, YOU ARE GOING TO
2 CHALLENGE EVERYTHING THAT HAS BEEN AGREED TO.

3 MR. FREELAND: THAT IS CORRECT, YOUR
4 HONOR.

5 THE COURT: YOU CAN HAVE A SEAT AND
6 CONTINUE WORKING.

7 (IN RECESS.)

8 THE COURT: HAVE A SEAT.

9 OKAY. WHERE ARE WE?

10 MR. FREELAND: YOUR HONOR, I THINK WE
11 ACTUALLY AGREED ON SOMETHING.

12 THE COURT: AWESOME.

13 MS. GRIER: THEY WERE YOUR WORDS.

14 MR. FREELAND: WE KIND OF --

15 MS. GRIER: WE WERE FAITHFUL TO YOUR
16 WORDS.

17 THE COURT: SO DO YOU NEED TO PUT
18 ANYTHING -- WELL, AS I UNDERSTAND IT, YOU HAVE AN ORDER
19 THAT YOU HAVE NEGOTIATED THAT YOU ARE READY FOR ME TO
20 SIGN?

21 MS. GRIER: YES, YOUR HONOR.

22 THE COURT: AND WE ALSO HAVE A SECONDARY
23 ORDER THAT CONCERNS USE OF SOME COMPONENTS OF THE
24 DEFENDANT'S ASSETS?

25 MS. GRIER: THAT'S CORRECT.

1 THE COURT: AS WE UNDERSTAND IT, I AM
2 GOING TO SIGN THE TRO ORDER FIRST TO FILE THAT FIRST,
3 AND THEN FILE THE SECOND ORDER.

4 MS. GRIER: YES, YOUR HONOR.

5 THE COURT: OKAY. I DO NEED TO SEE THOSE
6 ORDERS.

7 MS. GRIER: YOUR HONOR, WE HAVE E-MAILED
8 THEM TO YOUR COURT CLERK, NELSON.

9 THE COURT: HE WILL GO GET THEM.

10 IN THE MEANTIME, I ASSUME THERE ARE
11 THINGS THAT FOLKS WANT TO PUT ON THE RECORD WITH RESPECT
12 TO THE NEGOTIATIONS?

13 MR. FREELAND: YES, THANK YOU, YOUR
14 HONOR.

15 AS I NOTED EARLIER, WHILE WE HAVE WORKED
16 WITH COUNSEL THROUGH -- THE FTC TO MEMORIALIZE AN ORDER
17 THAT CAPTURES YOUR HONOR'S RULINGS, THE DEFENDANT'S
18 OBVIOUSLY OBJECT TO THE ENTRY OF THE TEMPORARY
19 RESTRAINING ORDER. WE RESERVE ALL RIGHTS TO COME BACK
20 AND TO MODIFY IT, IF NECESSARY, AND OBVIOUSLY PRESERVE
21 ALL RIGHTS WITH RESPECT TO CHALLENGING ALL OF THE
22 PROVISIONS OF IT AS WELL AS THE FTC'S ALLEGATIONS AND
23 EVIDENCE AT THE PRELIMINARY INJUNCTION HEARING.

24 THE COURT: OKAY. ANYTHING FROM THE FTC?

25 MS. GRIER: NO, YOUR HONOR.

1 THE COURT: OKAY. WHILE WE ARE -- I JUST
2 HAVE TO WAIT FOR IT BECAUSE I DON'T HAVE ANY
3 ELECTRONICS. THIS IS NOT MY COURTROOM. I DON'T ANY
4 ABILITY TO READ ANYTHING.

5 MS. GRIER: I WILL GIVE YOU A
6 PRELIMINARY. IT INCLUDES A RED LINE SO WHAT I SENT TO
7 YOUR CLERK WAS A RED LINE OF THE ORIGINAL PROPOSED ORDER
8 SO THAT YOU COULD IMMEDIATELY SEE THAT. AND THEN WE
9 SENT A CLEAN VERSION THAT HAS NO RED LINES AS WELL. AND
10 THEN ALSO THE ASSET FREEZE, THERE ARE NO RED LINES
11 BECAUSE THAT'S JUST SOMETHING WE HAVE AGREED TO DO.

12 THE COURT: HE IS GOING TO PRINT IT FOR
13 ME. WE DON'T HAVE A COLOR PRINTER IN THE BUILDING. SO
14 IT'S NOT GOING TO -- IT'S GOING TO BE INTERESTING TO
15 LOOK AT.

16 (OFF THE RECORD DISCUSSION.)

17 THE COURT: SO WHAT IS THE COMPLAINT
18 NUMBER?

19 MS. GRIER: ONE.

20 THE COURT: AND THEN THE ORDER TO SHOW --
21 THE TRO MOTION, TWO?

22 MS. GRIER: TWO. I DID CHANGE IT. IF
23 YOU ARE LOOKING AT THE RED LINE, I DID ADD THAT IN.

24 THE COURT: OKAY. I SEE IT. YEAH.

25 WHY DO WE NEED THE IMMEDIATE IRREPARABLE

1 HARM LANGUAGE?

2 MS. GRIER: I BELIEVE THAT WAS SUPPOSED
3 TO BE TAKEN OUT.

4 THE COURT: WHAT WAS TAKEN OUT WAS
5 BUSINESS OPPORTUNITY RULE AND THE CRFA, E AND F. I SEE
6 NO -- IT'S STILL THERE.

7 MS. GRIER: I'M SORRY, YOUR HONOR. I
8 SENT THE WRONG VERSION OF THE CLEAN VERSION. THE RED
9 LINE IS CORRECT.

10 THE COURT: I AM LOOKING AT THE RED LINE.
11 IF I LOOK AT D A T E, THERE IS GOOD CAUSE TO BELIEVE THAT
12 IMMEDIATE IRREPARABLE HARM WILL RESULT.

13 LET ME SEE. TAKE OUT THE WORD "PROPOSED"
14 AS WELL AT THE TOP AND PUT IN THE CASE NUMBER. I WILL
15 JUST TELL YOU WHAT THE EDITS ARE AND YOU CAN DO IT.

16 SO 24-4949, PUT IN THE CASE NUMBER AT THE
17 TOP. AND THEN IN THE UNITED STATES DISTRICT COURT, YOU
18 ARE GOING TO CAPITALIZE THAT.

19 MS. GRIER: I'M SORRY, YOUR HONOR, I AM
20 EXPERIENCING SLOWNESS.

21 THE COURT: OKAY.

22 MS. GRIER: OKAY. I HAVE THE CASE
23 NUMBER.

24 AND NEXT?

25 THE COURT: YOU ARE GOING TO TAKE OUT THE

1 WORD "PROPOSED."

2 MS. GRIER: RIGHT.

3 THE COURT: ADD IN THAT FIRST FINDINGS OF
4 FACT, THE COURT HAVING CONSIDERED THE COMPLAINT FOR
5 MOTION FOR TEMPORARY RESTRAINING ORDER, DECLARATIONS,
6 EXHIBITS AND THE MEMORANDUM POINTS AND AUTHORITIES FILED
7 IN SUPPORT THEREOF, AND HAVING HELD A HEARING ON THIS
8 MATTER WHICH WAS ATTENDED BY BOTH -- IN WHICH ATTORNEYS
9 FOR PLAINTIFF AND DEFENDANTS BOTH ARGUED. AND YOU ARE
10 REPLACING, AND BEING OTHERWISE ADVISED WITH THAT
11 LANGUAGE.

12 SO IT IS AFTER, FILED IN SUPPORT THEREOF,
13 HAVING HELD A HEARING ON THIS MATTER IN WHICH ATTORNEYS
14 FROM PLAINTIFF AND DEFENDANT BOTH ARGUED FINDS THAT --
15 AND MOVE ON.

16 MS. GRIER: YES.

17 THE COURT: OKAY. SO WE HAVE THAT
18 IMMEDIATE IRREPARABLE DAMAGE LANGUAGE IN E AND F, WHICH
19 I THOUGHT WE AGREED WAS NOT THE STANDARD.

20 MS. GRIER: I AM TAKING THAT OUT, YOUR
21 HONOR.

22 THE COURT: OKAY.

23 MS. GRIER: YOUR HONOR, THAT IS MY FAULT.
24 I AM SO SORRY ABOUT THAT.

25 THE COURT: THAT'S OKAY.

1 SO I THINK WHAT YOU NEED TO DO IS TO PUT
2 IN, HAVING WEIGHED THE EQUITY AND CONSIDERED THE
3 COMMISSION'S LIKELIHOOD OF ULTIMATE SUCCESS, YOU NEED TO
4 PUT IN THAT STANDARD, RIGHT, THE FTC STANDARD? SO
5 INSTEAD EACH TIME YOU SAY, "IMMEDIATE AND IRREPARABLE
6 HARM," JUST SAY --

7 MS. GRIER: SO IT WOULD BE THE A, THE
8 COURT HAS JURISDICTION OVER THE SUBJECT MATTER. A IS
9 FINE, C, THERE IS GOOD CAUSE TO BELIEVE THAT DEFENDANTS
10 HAVE ENGAGE IN --

11 THE COURT: FINE C FINE, D FINE. AND
12 THEN E AND F HAVE THE INJUNCTIVE LANGUAGE FROM NORMAL
13 INJUNCTION. SO WE NEED TO REPLACE THAT WITH -- WE COULD
14 SAY, HAVING GOOD CAUSE TO BELIEVE THAT THE STANDARDS FOR
15 A TEMPORARY RESTRAINING ORDER UNDER THE FTC HAVE BEEN
16 MET, YOU KNOW. AND IF YOU --

17 MR. FREELAND: YOUR HONOR ,I AM NOT SURE
18 THAT WE HAVE THE RIGHT VERSION.

19 MS. GRIER: THAT'S WHAT I'M SAYING IS
20 THAT I APOLOGIZE, I SENT THE WRONG VERSION. AND WHAT WE
21 HAD UNDERSTOOD YOUR ORDER TO BE WAS THAT THERE WAS NONE
22 OF THIS LANGUAGE AT ALL, AND THAT THERE WAS A FINDING.
23 I APOLOGIZE, YOUR HONOR. I CAN RESEND THAT. THAT IS
24 COMPLETELY MY FAULT. IT LOOKS LIKE I DRAGGED AND
25 DROPPED THE WRONG DOCUMENT.

1 THE COURT: WHY DON'T YOU SEND THAT
2 AGAIN, AND I WILL LOOK AT THE NEXT ORDER.

3 MS. GRIER: I AM SO SORRY, YOUR HONOR.

4 THE COURT: NO PROBLEM.

5 MS. GRIER: I AM SO SORRY.

6 MR. FREELAND: I'M GLAD WE CAUGHT IT.

7 I THOUGHT WE WERE GOING TO TAKE OUT AFTER
8 C ON -- LIKE YOUR HONOR SAID, THE FTC SATISFIES ITS
9 BURDEN. AND THEN D, E, F AND G -- I'M SORRY D, E, F ARE
10 GOING TO COME OUT. AND THEN G AND H WOULD BECOME THE
11 NEW D. THAT'S WHAT I THOUGHT WE WERE GOING TO DO.

12 MS. GRIER: I SEE. THE CLEAN VERSION IS
13 THE CORRECT VERSION.

14 THE COURT: NOT MINE.

15 MS. GRIER: IT STARTS WITH WHAT WE HAD
16 AGREED ON, SO IT SAYS, FINDINGS OF FACT, IT SAYS A. AND
17 THEN IT SAYS THE COURT FINDS THAT THE FTC HAS SATISFIED
18 ENSURING TO OBTAIN A TEMPORARY RESTRAINING ORDER
19 PURSUANT TO SECTION 5 OF THE FTC ACT.

20 THE COURT: OKAY. AND THEN IT HAS E AND
21 F, WHICH ARE THE IMMEDIATE IRREPARABLE HARM THING.

22 MS. GRIER: CORRECT.

23 THE COURT: BUT THAT'S --

24 MS. GRIER: WOULD YOU LIKE ME TO DELETE
25 THAT AS WELL?

1 THE COURT: YES, BECAUSE THAT'S NOT THE
2 STANDARD THAT I USED, RIGHT?

3 MS. GRIER: RIGHT. THAT CAN BE DELETED
4 AS WELL.

5 THE COURT: AND ALSO IT REFERS TO THE
6 BUSINESS OPPORTUNITY RULE AND THE CRFA, WHICH I DID NOT
7 DETERMINE THEM.

8 MS. GRIER: SO I'M GOING TO DELETE ALL OF
9 THOSE, WHAT IS IN THE CLEAN VERSION AS D, E, F.

10 THE COURT: I MEAN, I THINK IT'S MUCH
11 EASIER INSTEAD OF ALL THIS WEIGHING THE EQUITY, JUST
12 SAY, HAVING DETERMINED AT A HEARING ON THE RECORD --
13 AFTER AN ARGUMENT ON THE RECORDS THAT A TEMPORARY
14 RESTRAINING ORDER IS WARRANTED UNDER THE CIRCUMSTANCES.
15 THEN ALL OF THIS STUFF OF WHETHER OR NOT IT'S RIGHT CAN
16 BE DONE WITH --

17 MS. GRIER: SO I'M DELETING ALL OF THE
18 SECTIONS.

19 THE COURT: WHILE YOU KEEP DOING THAT,
20 I'M GOING TO READ.

21 MS. GRIER: AND WOULD YOU LIKE TO READ TO
22 ME WHAT YOU WOULD LIKE ME TO SAY?

23 THE COURT: LET'S SEE. AFTER HEARING
24 THIS DAY ON THE RECORD DURING WHICH ATTORNEYS FOR THE
25 PLAINTIFFS AND FOR THE DEFENDANTS PRESENTED ARGUMENT.

1 THE COURT DETERMINED THAT A TEMPORARY RESTRAINING ORDER
2 IS WARRANTED, AND SO ORDERED, AND ORDERED IS IN BOLD AND
3 CAPS. AND YOU CAN EVEN SAY, THE TERMS OF THE TRO ARE
4 SET FORTH HEREIN.

5 MS. GRIER: YES.

6 THE COURT: OKAY.

7 MS. GRIER: DOES THE COURT WANT TO LEAVE
8 THE A, THE COURT HAS JURISDICTION.

9 THE COURT: YES.

10 MS. GRIER: SO IT WOULD BE A AND THEN B
11 WOULD BEGIN WITH WHAT YOU JUST DICTATED TO ME.

12 THE COURT: YES.

13 MS. GRIER: OKAY.

14 THE COURT: ACTUALLY, YOU COULD MODIFY C
15 TO INCLUDE THE REFERENCE THAT HERE BECAUSE THAT'S
16 REALLY -- THAT'S REALLY WHAT I DID, RIGHT? THE COURT
17 FINDS THAT THE FTC HAS SATISFIED ITS BURDEN TO OBTAIN
18 TEMPORARY RESTRAINING ORDER PURSUANT TO SECTION 5(A) OF
19 THE FTC ACT.

20 SO I THINK WHAT IT SAYS RIGHT NOW IS,
21 AFTER A HEARING, THE COURT HAS DETERMINED THAT -- AND
22 THE PARTIES HAVE -- THEY ARE ABLE TO ARGUE. SO
23 ESSENTIALLY IF YOU INCLUDE THIS REFERENCE TO SATISFY
24 BURDEN TO OBTAIN A TEMPORARY RESTRAINING ORDER PURSUANT
25 TO SECTION 5(A) OF THE FTC ACT, 15 U.S.C. 45(A)

1 INCORPORATING THE LANGUAGE THAT I GAVE YOU, THAT REALLY
2 SAYS IT BEST.

3 MS. GRIER: OKAY. GOT IT. ON PAGE 10
4 UNDER 5, FINANCIAL DISCLOSURES, IT SAYS, IT IS FURTHER
5 ORDERED THAT EACH DEFENDANT WITHIN FIVE DAYS OF SERVICE
6 OF THIS ORDER SHALL PREPARE AND DELIVER.

7 SO GIVEN THE FACT THAT I THINK THIS
8 ASSUMED THAT WE WERE GOING TO HAVE AN EX PARTE TRO
9 HEARING. AND SO YOU STILL WANT SERVICE OF THIS THING?

10 MS. GRIER: IS THIS ON -- SORRY, WHICH
11 SECTION?

12 THE COURT: IT'S AT SECTION 5, FINANCIAL
13 DISCLOSURES IT'S AT THE VERY BEGINNING. AND ALSO IT IS
14 FOREIGN ASSET WOULD BE REPATRIATION. IT'S JUST LANGUAGE
15 ABOUT SERVING THIS ORDER. WHICH IS FINE, BUT IT SEEMS
16 LIKE THERE'S A CASE, THEY ARE GOING TO GET IT ON THE
17 DOCKET, THEY ARE GOING TO HAVE IT. THIS IS PUTTING A
18 BURDEN ON SOMEONE TO ACTUALLY SERVE IT, WHICH IS BEYOND
19 WHICH I THINK NEEDS TO BE DONE IN THIS CONTEXT.

20 MS. GRIER: YOU ARE CORRECT, YOUR HONOR.
21 CAN WE DO WITHIN FIVE DAYS OF THIS ORDER?

22 THE COURT: OKAY.

23 MS. GRIER: AND DELETE THE SERVICE.

24 THE COURT: ARE YOU OKAY WITH THAT?

25 MR. FREELAND: YES, YOUR HONOR.

1 THE COURT: OKAY. SO YOU SHOULD DELETE
2 THAT IN FINANCIAL DISCLOSURES AND ALSO FOREIGN ASSET
3 REPATRIATION, WHICH I WILL CHECK IF THERE IS ANYTHING
4 ELSE.

5 ON PAGE 24 UNDER 20, WHICH IS IMMEDIATE
6 ACCESS TO BUSINESS PREMISES AND RECORDS, WE JUST NEED TO
7 BOLD THE WORDS, IT IS FURTHER ORDERED THAT.

8 MS. GRIER: YES, YOUR HONOR.

9 THE COURT: SO PAGE 27, SERVICE OF THIS
10 ORDER, WHICH IS 23, IT TALKS ABOUT SERVICE ON DEFENDANTS
11 AS WELL AS ON OTHER ENTITIES. BUT I THINK IT SHOULD BE
12 NOW PROBABLY, SHORT OF THE REFERENCE TO SERVICE ON
13 DEFENDANT, GIVEN THAT THEY ARE HERE. UNLESS THE FTC
14 THINKS THERE IS SOME REASON TO INCLUDE THAT LANGUAGE?

15 MS. GRIER: NO.

16 THE COURT: OKAY.

17 MS. GRIER: I AM DELETING, UPON SERVICE
18 OF THIS ORDER, IN ORDER TO PREVENT THE DESTRUCTION OF
19 DATA OR ELECTRONIC STORAGE --

20 THE COURT: WHERE ARE YOU LOOKING AT?

21 MS. GRIER: THERE'S ANOTHER PART.

22 THE COURT: WELL, SO IF YOU FIND ANYTHING
23 -- GO THROUGH THE DOCUMENT AND TO THE EXTENT THAT THERE
24 IS ANYTHING WHICH REQUIRES SERVICE ON THE DEFENDANT,
25 TALK TO THE DEFENDANT AND TELL HIM AND ASK HIM WHETHER

1 THEY ARE OKAY WITH REMOVING IT.

2 MS. GRIER: ON PAGE 23, IN ORDER TO
3 PREVENT THE DESTRUCTION OF COMPUTER DATA UPON SERVICE OF
4 THIS ORDER.

5 THE COURT: YES.

6 MS. GRIER: WE WOULD REMOVE THAT.

7 THE COURT: DO A CONTROL F ON "SERVICE"
8 AND JUST MAKE SURE THAT IT'S RIGHT. OKAY.

9 (DISCUSSION OFF THE RECORD.)

10 THE COURT: TYPE IN, 7TH DAY OF OCTOBER,
11 2024, AT 10 A.M. GIVEN THE FACT THAT YOU ARE ALL FROM
12 WASHINGTON, DO YOU WANT -- IS 10 A.M. TOO EARLY, 10:30?

13 MR. FREELAND: THAT'S FINE US WITH, YOUR
14 HONOR.

15 THE COURT: THAT'S OKAY WITH YOU?

16 MS. GRIER: YES. THAT'S FINE OR AN
17 AFTERNOON IS FINE, TOO. BUT 10:30 I THINK MAKES MORE
18 SENSE.

19 THE COURT: BY THE WAY, IF I AM RIGHT, I
20 DON'T HAVE TO PRO HAC YOU IN BECAUSE --

21 MS. GRIER: THAT'S MY UNDERSTANDING.

22 THE COURT: YOU ARE A GOVERNMENT
23 ATTORNEY, BUT YOU HAVE TO.

24 MR. FREELAND: I THINK YOUR HONOR GRANTED
25 OURS.

1 THE COURT: I DID?

2 MR. FREELAND: YES.

3 THE COURT: OKAY. IT SAYS, FURTHER
4 ORDERED, THIS ORDER SHALL EXPIRE 14 DAYS FROM THE DATE
5 OF ENTRY. LETS MAKE SURE THAT THAT WORKS. THIS IS THE
6 LAST PAGE. SO IF WE ARE GOING ON THE 7TH, WE HAVE TO
7 ADD 14 DAYS TO TODAY, 30 DAYS IN SEPTEMBER. SO THAT'S
8 TEN, PLUS FOUR. WE HAVE TO HAVE A DIFFERENT TIME,
9 BECAUSE OTHERWISE IT'S GOING TO EXPIRE.

10 MS. GRIER: WE CAN HAVE IT EXPIRE ON
11 OCTOBER 7TH, THE DATE OF THE HEARING OR THE DAY AFTER.

12 THE COURT: LET'S DO THE DAY AFTER, JUST
13 IN CASE.

14 MR. FREELAND: THAT'S FINE WITH US.

15 THE COURT: EXPIRE OCTOBER 8TH.

16 I TOO HAVE HAD A LONG DAY.

17 SO YOU ARE GOING TO TYPE IN, THIS ORDER
18 SHALL EXPIRE OCTOBER 8, 2024.

19 MS. GRIER: YES.

20 THE COURT: AND KEEP THAT, UNLESS WITHIN
21 SUCH TIME LANGUAGE.

22 OKAY. AND THEN RETENTION OF
23 JURISDICTION. I WILL TELL YOU THIS IS THE VERY FIRST
24 TIME I HAVE EVER RETAINED JURISDICTION OVER SOMETHING
25 LIKE THIS. I NORMALLY DON'T DO IT, BUT THE LANGUAGE,

1 NOW SO ORDERED IN BOLD, AND YOU ARE GOING TO PUT IN THE
2 DAY AND THE TIME. AND LET US PUT 4:30 AS THE TIME,
3 4:30 P.M. AS THE TIME AND TYPE IN MY NAME ABOVE, UNITED
4 STATES DISTRICT JUDGE WENDY BEETLESTONE, J.

5 OKAY. SO NOW WE SHOULD HAVE THE DOCUMENT
6 THAT EVERYONE AGREES TO, RIGHT?

7 MR. FREELAND: YOUR HONOR, I WAS CONFUSED
8 WITH THE VERSIONS WE WERE STARTING WITH. IF WE CAN GO
9 BACK. I CAN DO THIS THIS WITH MS. GRIER. I WANT TO
10 MAKE SURE THAT THE LANGUAGE THAT WE ADDED LOOKED AT
11 EVERYTHING, WE HELD A HEARING TODAY.

12 THE COURT: JUST TAKE A LOOK AT THAT
13 LANGUAGE AND MAKE SURE IT IS OKAY. I WANT TO STAY HERE,
14 BECAUSE I WANT TO GET THIS THING FILED. AS LONG AS I AM
15 HERE, THEY ARE GOING TO WAIT. SO WE -- AND IT'S BECAUSE
16 IT'S FRIDAY AND IT'S THE GOVERNMENT THEY ARE THINKING
17 ABOUT LEAVING RIGHT NOW.

18 MR. FREELAND: YES, YOUR HONOR.

19 MS. GRIER: YOUR HONOR, THE FINDINGS OF
20 FACT STATES, THE COURT HAVING CONSIDERED THE COMPLAINT,
21 THE MOTION FOR TEMPORARY RESTRAINING ORDER, DECLARATION,
22 EXHIBIT, AND MEMORANDUM OF POINT AND AUTHORITIES FILED
23 IN SUPPORT THEREOF AND BEING OTHERWISE ADVISED THAT.

24 THE COURT: I THINK THE OTHERWISE IS --
25 "AND AFTER A HEARING ON THE RECORD" INSTEAD OF

1 "OTHERWISE ADVISED THAT."

2 MS. GRIER: WHAT I HAVE FOR THE -- AFTER
3 A HEARING ON THE RECORD WAS IN PART C.

4 THE COURT: OKAY. I JUST DON'T KNOW WHAT
5 "OTHER ADVISED" MEANS.

6 MS. GRIER: I CAN TAKE THAT OUT.

7 THE RECEIVER SHALL NOT ENTER THE PERSONAL
8 RESIDENCE OF THE PRUSINOWSKI'S.

9 MR. MCAULIFFE: THE RECEIVER IS DIRECTED
10 TO PRIORITIZE THE PROTECTION OF LEGITIMATE BUSINESS
11 OPERATIONS, IF ANY.

12 MR. FREELAND: PERFECT.

13 THE COURT: OKAY. SO I THINK YOU SHOULD
14 BOTH HAVE A COPY OF THE ORDER. JUST BECAUSE I WANT TO
15 MAKE SURE YOU GET IT. AS SOON AS I SIGN, IT'S SIGNED.
16 IT'S JUST THAT I DON'T KNOW WHETHER IT'S GOING TO GET ON
17 THE DOCKET TODAY. AND THEREFORE, IT WOULD NOT BE ON THE
18 RECORD UNTIL THIS WEEKEND.

19 SO I AM GOING TO GO BACK AND SEND IT TO
20 US AND I AM GOING TO PRINT IT UP. WE ARE GOING TO BRING
21 BACK A COPY FOR EACH OF YOU AND HOPEFULLY WE WILL GET IT
22 DOCKETED ANYWAY IN THE NEXT FEW MINUTES.

23 ANYTHING ELSE?

24 MR. FREELAND: JUST THE SAME RESERVATIONS
25 OF RIGHTS THAT I TALKED ABOUT EARLIER, YOUR HONOR. I

1 WANT TO MAKE SURE THE RECORD IS CLEAR.

2 THE COURT: THE RECORD IS CLEAR.

3 MR. FREELAND: THANK YOU, YOUR HONOR.

4 THE COURT: THANK YOU, VERY MUCH.

5 (COURT ADJOURNED.)

6

7

8

9

10 I CERTIFY THAT THE FOREGOING IS A
11 CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
12 ABOVE-ENTITLED MATTER.

13 9-25-24

14 DATE

Lynn Gligor
OFFICIAL COURT REPORTER

15 LYNN GLIGOR, RMR

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\$	53:4, 53:7, 53:11, 53:16, 86:5	5	914 [1] - 6:10 9TH [1] - 6:15	ACTIVE [2] - 60:12, 60:16
\$10,000 [3] - 25:25, 35:2, 35:17	200 [1] - 48:10	5 [25] - 7:16, 11:5, 11:13, 11:21, 12:18, 12:23, 12:24, 13:5, 23:2, 23:9, 23:16, 23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	A	ACTMITY [1] - 70:25
\$12,000 [1] - 29:7	20007 [1] - 2:7	11:13, 11:21, 12:18, 12:23, 12:24, 13:5, 23:2, 23:9, 23:16, 23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	A.M [2] - 87:11, 87:12	ACTS [1] - 24:5
\$14 [1] - 14:10	2006 [1] - 24:19	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ABILITY [2] - 8:6, 78:4	ACTUALLY [8] - 29:5, 32:4, 47:21, 59:4, 60:14, 76:11, 84:14, 85:18
\$30,000 [2] - 37:10, 38:9	2019 [1] - 6:11	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ABLE [13] - 11:8, 13:9, 18:3, 23:13, 27:16, 40:19, 57:24, 57:25, 61:20, 61:21, 64:2, 68:7, 84:22	AD [9] - 29:9, 33:2, 33:6, 33:12, 37:18, 37:19, 60:17
\$35,000 [2] - 35:18, 38:7	2021 [2] - 7:14, 31:16	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ABOUT [60] - 4:2, 7:23, 9:24, 10:10, 10:20, 11:16, 11:20, 15:9, 15:12, 16:5, 18:25, 19:4, 19:19, 20:8, 20:15, 21:18, 22:17, 30:20, 33:19, 34:18, 36:5, 36:22, 39:1, 39:11, 39:13, 39:21, 40:23, 41:9, 43:5, 43:15, 44:7, 44:11, 45:1, 46:4, 46:7, 46:10, 47:10, 47:11, 48:6, 51:14, 51:17, 51:19, 51:22, 52:12, 54:24, 57:10, 58:3, 58:19, 61:13, 63:18, 63:25, 65:16, 66:7, 67:7, 70:16, 80:24, 85:15, 86:10, 89:17, 90:25	ADDITIONALLY [2] - 6:17, 28:19
\$50,000 [1] - 25:25	2022 [3] - 31:16, 37:10, 38:8	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDED [1] - 89:10	ADDRESS [3] - 11:3, 52:4, 57:3
	2024 [3] - 1:8, 87:11, 88:18	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADD [6] - 38:2, 38:4, 64:9, 78:23, 80:3, 88:7	ADDRESSES [2] - 22:23, 23:4
	20580 [1] - 1:18	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	ADEQUATE [1] - 27:1
	21 [2] - 67:21, 67:22	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	ADHESION [1] - 14:4
	22 [2] - 54:13, 54:14	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	ADJOURNED [1] - 91:5
	22314 [1] - 2:3	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	ADMISSION [2] - 24:8, 60:5
	23 [2] - 86:10, 87:2	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	ADMITS [1] - 27:7
	24 [3] - 48:22, 51:12, 86:5	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	ADMITTED [1] - 59:20
	24-4949 [1] - 79:16	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	ADMITTEDLY [1] - 12:11
	24-CV-4949 [1] - 1:5	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	ADS [9] - 35:16, 39:17, 47:4, 60:3, 60:7, 60:12, 60:22, 61:10, 62:4
	25 [3] - 35:18, 51:13, 74:19	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	ADVERTISEMENT [1] - 26:24
	250 [11] - 47:8, 48:11, 56:1, 56:5, 56:11, 59:22, 61:19, 61:20, 61:22, 68:13, 69:6	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	ADVERTISEMENTS [1] - 29:2
	2609 [1] - 1:21	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	ADVERTISER [1] - 60:13
	27 [3] - 38:25, 54:16, 86:9	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	ADVERTISING [6] - 5:4, 11:22, 26:10, 37:16, 38:3, 38:4
	277 [1] - 2:3	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	ADVISED [4] - 80:10, 89:23, 90:1, 90:5
	28 [1] - 5:8	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	AFFIDAVITS [2] - 31:19, 52:15
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	AFTER [17] - 11:11, 11:23, 22:2, 29:7, 47:5, 52:25, 53:4,
	3	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
	3 [1] - 38:18	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
	3(B) [1] - 6:18	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
	30 [4] - 25:20, 75:4, 75:9, 88:7	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	
	3050 [1] - 2:7	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	
	344 [1] - 6:15	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
	346 [3] - 6:16, 7:4, 46:3	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
	36 [1] - 31:17	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
	3RD [2] - 6:10, 24:11	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	
	4	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
	4 [2] - 38:25, 69:14	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
	400 [1] - 2:7	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
	437 [1] - 4:14	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	
	45(A) [4] - 4:13, 5:3, 67:10, 84:25	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	
	45(A) [1] - 24:6	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
	45(B) [1] - 5:6	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
	45(B) [1] - 4:15	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
	453 [1] - 24:18	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	
	47 [3] - 6:16, 7:4, 46:3	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	
	4:30 [2] - 89:2, 89:3	23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESS [3] - 11:3, 52:4, 57:3	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDRESSES [2] - 22:23, 23:4	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITION [2] - 24:21, 61:22	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONAL [12] - 27:12, 29:13, 31:24, 33:14, 35:14, 35:15, 35:16, 42:2, 43:14, 43:21, 58:8, 72:25	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3, 62:3, 65:16, 82:19, 85:4, 85:12	ADDITIONALLY [2] - 6:17, 28:19	
		23:21, 23:22, 23:24, 33:20, 37:3, 37:17, 37:18, 42:10, 47:3		

72:13, 80:12, 82:7,
83:13, 83:23, 84:21,
88:11, 88:12, 89:25,
90:2
AFTERNOON [2] -
60:4, 87:17
AGAIN [20] - 11:2,
12:21, 15:25, 16:15,
19:21, 26:16, 27:12,
31:24, 32:16, 33:1,
39:10, 47:2, 48:24,
52:2, 55:18, 65:13,
66:11, 67:5, 71:2,
82:2
AGAINST [3] - 4:7,
21:17, 71:1
AGREE [10] - 5:11,
5:21, 7:5, 14:3,
45:13, 45:18, 47:2,
47:3, 64:16, 73:20
AGREED [9] - 44:14,
60:20, 72:6, 75:11,
76:2, 76:11, 78:11,
80:19, 82:16
AGREEMENT [6] -
63:13, 63:16, 68:17,
72:8, 74:21, 75:18
AGREES [1] - 89:6
AHEAD [3] - 45:11,
65:12, 68:23
AIDED [1] - 1:25
AL [1] - 1:6
ALEXANDRIA [1] - 2:3
ALIGN [1] - 6:20
ALL [38] - 11:19,
13:10, 14:11, 14:12,
16:5, 17:11, 18:25,
19:1, 22:7, 27:16,
28:16, 29:8, 35:4,
35:12, 41:13, 42:21,
45:1, 47:16, 60:6,
60:20, 60:25, 61:1,
61:2, 67:7, 69:2,
69:25, 70:9, 75:20,
77:19, 77:21, 81:22,
83:8, 83:11, 83:15,
83:17, 87:11
ALLEGATIONS [2] -
13:18, 77:22
ALLEGED [4] - 4:21,
14:10, 42:4, 42:15
ALLOW [3] - 56:16,
68:18, 69:8
ALLOWS [1] - 57:1
ALONE [1] - 40:1
ALREADY [4] - 36:10,
44:23, 45:3, 51:25
ALSO [37] - 3:18, 8:2,
8:16, 9:20, 17:10,
17:22, 23:9, 23:17,
24:21, 26:2, 29:24,
39:7, 41:10, 43:6,
43:8, 48:8, 48:13,
51:13, 53:10, 54:24,
56:2, 56:5, 56:15,
56:25, 57:22, 58:14,
59:15, 61:21, 62:16,
67:10, 70:5, 70:23,
76:22, 78:10, 83:5,
85:13, 86:2
ALTHOUGH [1] -
52:19
AM [69] - 3:8, 3:10,
3:20, 7:22, 10:19,
11:18, 12:11, 13:25,
16:15, 18:10, 18:22,
18:23, 19:1, 19:25,
20:2, 20:4, 20:17,
20:22, 21:8, 27:23,
30:6, 34:7, 36:24,
36:25, 37:24, 38:22,
39:8, 40:6, 41:3,
45:4, 50:15, 50:22,
51:17, 52:1, 53:8,
53:15, 53:25, 54:22,
55:16, 56:7, 56:14,
56:15, 62:13, 62:25,
63:24, 64:17, 65:13,
71:3, 71:21, 71:24,
73:17, 74:3, 74:19,
77:1, 79:10, 79:19,
80:20, 80:24, 81:17,
82:3, 82:5, 86:17,
87:19, 89:14, 90:19,
90:20
AMANDA [2] - 1:15,
3:8
AMENABLE [1] - 18:9
AMEND [1] - 68:17
AMERICAN [1] - 25:2
AMG [32] - 4:2, 7:10,
7:13, 7:19, 7:23, 8:1,
8:5, 8:7, 10:10,
12:14, 12:19, 14:23,
15:7, 15:15, 15:22,
16:7, 18:18, 19:5,
19:17, 20:24, 21:2,
21:4, 21:11, 21:13,
21:25, 22:7, 23:2,
40:23, 65:17
AMOUNT [2] - 70:11,
70:14
AN [70] - 4:16, 4:22,
4:25, 8:15, 9:8, 10:2,
10:20, 11:5, 11:9,
12:25, 13:9, 14:8,
14:17, 14:24, 16:8,
17:11, 17:22, 18:15,
21:9, 23:1, 23:3,
23:10, 23:13, 24:7,
35:11, 37:17, 37:18,
37:24, 38:14, 38:16,
39:4, 40:6, 43:9,
43:13, 44:6, 45:19,
47:2, 47:7, 48:4,
50:12, 50:18, 51:13,
52:9, 57:1, 58:1,
58:17, 60:4, 60:21,
63:13, 63:15, 63:17,
63:22, 65:18, 67:1,
67:8, 68:1, 68:11,
68:20, 70:2, 71:15,
71:24, 72:25, 73:3,
74:21, 76:18, 77:16,
83:13, 85:8, 87:16
ANALYSIS [4] - 23:1,
37:24, 45:14, 45:18
ANALYZE [1] - 21:11
AND [449] - 3:10, 3:18,
3:19, 3:21, 4:1, 4:3,
4:7, 4:14, 4:18, 4:19,
4:21, 4:25, 5:5, 5:10,
5:15, 5:20, 6:1, 6:6,
6:9, 6:24, 7:3, 7:13,
7:15, 7:19, 7:25, 8:1,
8:4, 8:7, 8:8, 8:9,
8:10, 8:16, 8:23, 9:7,
9:12, 9:16, 9:20,
9:24, 10:4, 10:10,
10:11, 10:12, 10:13,
10:19, 11:2, 11:4,
11:6, 11:12, 11:23,
11:25, 12:1, 12:5,
12:9, 12:11, 12:14,
12:16, 12:19, 12:20,
13:2, 13:5, 13:10,
13:13, 13:22, 13:23,
14:21, 15:19, 15:25,
16:5, 16:7, 16:12,
16:13, 16:15, 16:18,
17:8, 17:21, 17:24,
18:5, 18:6, 18:14,
19:11, 20:8, 20:19,
20:23, 20:25, 21:21,
21:23, 22:5, 22:6,
22:10, 22:13, 22:17,
22:21, 22:22, 23:8,
23:11, 23:13, 23:16,
23:19, 24:2, 24:15,
24:17, 24:20, 24:21,
25:1, 25:2, 25:5,
25:9, 25:12, 25:16,
25:20, 25:22, 25:23,
25:25, 26:1, 26:4,
26:9, 26:21, 26:22,
26:24, 27:1, 27:8,
27:10, 27:11, 27:13,
27:21, 27:22, 28:5,
28:9, 28:10, 28:15,
28:22, 29:1, 29:3,
29:4, 29:6, 29:8,
29:10, 29:12, 29:15,
29:18, 29:24, 30:3,
30:16, 31:2, 31:16,
31:17, 31:21, 31:24,
32:3, 32:6, 32:11,
32:12, 32:15, 32:20,
33:1, 33:2, 33:4,
33:5, 33:7, 33:24,
34:3, 34:23, 34:24,
34:25, 35:1, 35:3,
35:11, 35:14, 35:16,
35:18, 36:2, 36:11,
36:14, 36:20, 37:5,
37:8, 37:12, 37:14,
37:21, 37:25, 38:1,
38:3, 38:4, 38:9,
38:23, 38:25, 39:10,
39:16, 39:17, 39:23,
39:24, 40:4, 40:9,
40:19, 40:23, 41:1,
41:10, 41:19, 42:6,
42:19, 42:21, 42:24,
43:10, 43:24, 43:25,
44:10, 44:17, 44:23,
45:16, 45:17, 45:18,
45:24, 46:2, 46:6,
46:7, 46:15, 46:18,
46:20, 47:9, 48:6,
48:8, 48:16, 48:24,
49:10, 49:16, 49:24,
50:14, 50:20, 50:23,
50:25, 51:6, 51:12,
51:17, 51:22, 51:25,
52:1, 52:13, 52:15,
52:23, 52:25, 54:10,
55:18, 55:22, 55:24,
56:2, 56:8, 56:12,
56:15, 56:24, 56:25,
57:4, 57:5, 57:10,
57:13, 57:15, 57:19,
57:22, 58:2, 58:3,
58:4, 58:10, 58:13,
58:16, 59:6, 59:11,
59:23, 59:24, 60:2,
60:5, 60:12, 60:14,
60:18, 60:20, 60:25,
61:1, 61:19, 61:21,
61:25, 62:4, 62:5,
62:14, 62:16, 62:17,
62:21, 63:2, 63:4,
63:7, 63:18, 63:19,
63:20, 64:5, 64:11,
64:14, 65:6, 65:9,
65:17, 65:19, 66:8,
66:11, 66:22, 67:1,
67:10, 67:14, 67:25,
68:8, 68:10, 68:15,
69:2, 69:3, 69:6,
69:7, 69:10, 69:13,
69:14, 69:16, 70:3,
70:5, 70:6, 70:13,
70:18, 70:19, 70:22,
70:24, 71:7, 71:9,
71:11, 71:13, 71:14,
71:16, 71:21, 71:23,
72:12, 72:16, 72:18,
72:24, 73:4, 73:5,
73:9, 73:11, 73:20,
73:21, 74:1, 74:3,
74:5, 74:12, 74:14,
74:21, 75:11, 75:12,
75:19, 75:20, 75:24,
76:5, 76:22, 77:3,
77:20, 77:22, 78:8,
78:9, 78:20, 79:5,
79:14, 79:15, 79:17,
79:24, 80:6, 80:7,
80:9, 80:10, 80:14,
80:15, 80:18, 81:2,
81:5, 81:11, 81:12,
81:16, 81:20, 81:22,
81:24, 82:2, 82:9,
82:10, 82:16, 82:20,
83:5, 83:6, 83:21,
83:25, 84:2, 84:3,
84:10, 84:21, 85:6,
85:9, 85:13, 85:23,
86:2, 86:6, 86:23,
86:25, 87:8, 88:20,
88:22, 89:1, 89:2,
89:3, 89:13, 89:15,
89:16, 89:22, 89:23,
89:25, 90:17, 90:19,
90:20, 90:21
ANOTHER [5] - 28:15,
29:3, 56:12, 62:6,
86:21
ANSWER [1] - 42:1
ANSWERED [1] - 9:1
ANY [24] - 13:23, 15:6,
15:15, 21:17, 21:18,
30:3, 30:5, 36:18,
37:14, 45:7, 45:19,
48:18, 49:20, 51:7,
53:18, 53:19, 57:6,
59:22, 60:5, 61:3,
63:7, 78:2, 78:3,
90:11
ANYTHING [11] -
17:21, 44:11, 67:12,
74:16, 76:18, 77:24,
78:4, 86:3, 86:22,
86:24, 90:23
ANYWAY [3] - 16:20,
27:24, 90:22
ANYWHERE [3] -
61:11, 62:5, 62:6
APART [1] - 17:4
APOLOGIES [1] -
67:19
APOLOGIZE [3] -

12:21, 81:20, 81:23
APPEAL [1] - 75:19
APPEALS [1] - 6:21
APPEARANCES [2] -
 1:14, 2:1
APPOINT [4] - 44:18,
 56:14, 61:9, 69:1
APPOINTED [4] -
 4:22, 33:20, 57:24,
 58:18
APPOINTMENT [5] -
 9:21, 15:25, 55:22,
 56:20, 56:23
APPROPRIATE [9] -
 10:3, 12:16, 23:8,
 23:11, 41:19, 49:8,
 53:7, 71:13, 71:15
ARE [244] - 3:18, 3:22,
 3:23, 3:24, 3:25, 4:1,
 4:3, 5:2, 5:25, 6:2,
 7:9, 7:11, 7:20, 7:25,
 8:2, 8:12, 8:13, 8:15,
 8:16, 8:20, 8:21,
 8:22, 8:23, 9:3, 9:7,
 9:12, 9:16, 9:20,
 10:8, 10:10, 10:14,
 10:15, 10:16, 10:23,
 11:8, 11:19, 12:4,
 12:5, 12:6, 12:7,
 13:8, 14:24, 15:8,
 15:14, 15:22, 16:4,
 16:6, 16:7, 17:8,
 17:9, 17:23, 17:24,
 18:3, 18:25, 20:1,
 20:2, 20:6, 20:16,
 20:18, 21:9, 21:10,
 22:24, 23:19, 24:20,
 25:10, 25:12, 26:4,
 27:4, 28:4, 29:11,
 29:16, 29:17, 29:23,
 30:3, 30:8, 30:9,
 30:21, 30:25, 31:2,
 31:3, 32:4, 32:11,
 32:12, 32:13, 32:14,
 32:15, 32:25, 33:10,
 34:4, 34:8, 34:14,
 34:19, 35:8, 35:12,
 35:20, 35:22, 36:1,
 36:13, 36:14, 36:22,
 37:8, 37:11, 37:13,
 37:15, 37:17, 38:4,
 38:5, 38:6, 38:7,
 38:11, 38:12, 39:12,
 40:3, 40:5, 41:9,
 41:10, 41:16, 42:4,
 42:7, 42:20, 42:25,
 43:21, 43:23, 43:25,
 44:9, 44:10, 44:12,
 45:1, 45:15, 45:16,
 47:8, 47:9, 47:20,

47:21, 47:22, 48:1,
 48:7, 48:8, 48:10,
 48:13, 48:14, 48:21,
 49:2, 49:11, 51:14,
 51:16, 51:19, 52:2,
 52:7, 53:22, 54:10,
 54:18, 55:20, 56:1,
 56:10, 56:11, 56:12,
 57:4, 57:5, 57:8,
 58:16, 58:22, 59:9,
 59:10, 59:15, 59:22,
 59:23, 59:25, 60:1,
 60:2, 61:2, 61:7,
 61:13, 61:21, 61:22,
 61:24, 62:5, 63:2,
 63:16, 63:19, 64:5,
 64:9, 69:2, 69:5,
 69:6, 69:21, 70:2,
 71:19, 71:23, 72:18,
 72:22, 73:1, 73:3,
 73:4, 73:5, 73:7,
 73:15, 73:17, 73:20,
 74:9, 75:22, 75:23,
 75:25, 76:1, 76:9,
 76:19, 77:10, 78:1,
 78:10, 78:23, 79:15,
 79:18, 79:25, 80:9,
 82:9, 82:21, 84:3,
 84:22, 85:16, 85:17,
 85:20, 85:24, 86:13,
 86:20, 87:1, 87:11,
 87:22, 88:6, 88:17,
 89:1, 89:15, 89:16,
 90:20
AREAS [1] - 64:15
AREN'T [1] - 26:13
ARGUE [1] - 84:22
ARGUED [2] - 80:9,
 80:14
ARGUING [2] - 7:12,
 7:18
ARGUMENT [11] -
 15:14, 15:22, 23:13,
 23:14, 34:3, 34:7,
 38:21, 40:14, 66:22,
 83:13, 83:25
ARRIVED [1] - 29:5
AS [56] - 3:11, 6:14,
 7:11, 8:19, 8:24,
 10:18, 13:2, 14:17,
 21:22, 22:1, 25:20,
 27:16, 30:5, 36:24,
 47:1, 50:9, 50:12,
 53:20, 54:11, 60:2,
 60:6, 62:19, 69:4,
 69:15, 70:4, 71:23,
 72:3, 73:10, 74:5,
 74:8, 75:10, 76:18,
 77:1, 77:15, 77:22,
 78:9, 79:14, 82:25,

83:4, 83:9, 86:11,
 89:2, 89:3, 89:14,
 90:15
ASAP [1] - 62:1
ASIDE [4] - 14:8,
 18:22, 20:4, 20:22
ASK [9] - 8:10, 10:19,
 38:23, 41:6, 47:14,
 69:18, 70:13, 75:11,
 86:25
ASKED [2] - 22:8,
 69:25
ASKING [24] - 8:2,
 8:13, 8:15, 8:16,
 8:20, 8:21, 8:22,
 8:23, 9:3, 9:7, 9:12,
 9:16, 9:20, 9:22,
 9:25, 10:15, 10:17,
 20:1, 20:22, 54:18,
 70:2, 71:8
ASSERTING [3] -
 4:12, 24:25, 30:14
ASSESSMENT [1] -
 6:20
ASSET [62] - 4:22,
 8:15, 8:22, 9:24,
 10:2, 10:20, 10:24,
 11:5, 11:9, 12:25,
 13:9, 13:10, 14:18,
 16:5, 16:6, 16:8,
 17:11, 17:22, 18:4,
 18:12, 18:15, 19:4,
 19:12, 19:14, 20:7,
 20:9, 40:24, 44:3,
 44:6, 45:3, 45:4,
 45:19, 50:18, 52:8,
 63:18, 63:20, 64:20,
 65:1, 65:6, 65:8,
 65:18, 65:19, 65:22,
 66:1, 66:2, 67:14,
 68:11, 69:23, 70:2,
 70:11, 71:6, 72:7,
 72:23, 72:24, 72:25,
 74:5, 75:7, 78:10,
 85:14, 86:2
ASSETS [29] - 16:18,
 16:20, 16:25, 17:4,
 17:8, 17:14, 17:23,
 18:5, 19:7, 19:10,
 19:23, 20:13, 20:24,
 20:25, 41:2, 41:10,
 46:16, 50:20, 57:23,
 69:2, 69:21, 69:23,
 69:24, 70:3, 70:4,
 70:5, 70:24, 76:24
ASSOCIATED [1] -
 38:5
ASSUME [5] - 11:1,
 46:6, 61:19, 75:25,
 77:10

ASSUMED [1] - 85:8
ASSUMES [1] - 24:20
ASSUMING [5] - 18:2,
 44:21, 71:21, 71:24,
 73:17
AT [84] - 3:22, 4:4,
 4:11, 6:25, 7:4, 8:13,
 8:17, 9:3, 11:9,
 12:24, 14:15, 16:7,
 16:19, 17:18, 21:9,
 21:13, 22:13, 23:8,
 23:22, 26:21, 27:21,
 29:22, 30:18, 30:22,
 31:2, 31:13, 36:9,
 36:12, 36:17, 37:5,
 38:17, 38:18, 38:25,
 39:23, 40:9, 40:12,
 40:21, 43:25, 46:3,
 46:17, 47:1, 50:14,
 51:17, 51:18, 52:12,
 52:14, 52:15, 52:16,
 52:20, 53:24, 55:7,
 55:16, 56:14, 60:21,
 61:15, 63:12, 64:5,
 65:15, 65:16, 68:12,
 68:13, 69:3, 69:4,
 75:14, 77:23, 78:15,
 78:23, 79:10, 79:11,
 79:14, 79:16, 81:22,
 82:2, 83:12, 85:12,
 85:13, 86:20, 87:11,
 89:10, 89:12
ATTACHED [7] -
 25:12, 26:18, 26:24,
 31:18, 38:16, 38:17,
 50:9
ATTEMPTED [2] -
 63:15, 63:25
ATTENDED [1] - 80:8
ATTORNEY [1] -
 87:23
ATTORNEY'S [1] -
 71:11
ATTORNEYS [3] -
 80:8, 80:13, 83:24
AUTHORITIES [2] -
 80:6, 89:22
AUTHORITY [4] -
 4:17, 7:16, 39:4,
 68:4
AUTHORIZATION [1]
 - 73:22
AUTHORIZED [1] -
 19:17
AUTHORIZES [2] -
 21:15, 21:21
AVAILABLE [5] -
 17:18, 17:20, 17:23,
 36:18, 49:19
AVE [1] - 1:17

AVERAGE [1] - 38:6
AWARD [1] - 21:21
AWARE [1] - 57:4
AWAY [2] - 17:10,
 35:3
AWESOME [1] - 76:12

B

BACK [17] - 19:22,
 27:13, 31:10, 32:7,
 32:16, 36:1, 39:10,
 39:14, 44:10, 65:9,
 68:1, 75:11, 75:23,
 77:19, 89:9, 90:19,
 90:21
BALANCE [3] - 7:1,
 45:25, 49:9
BALANCING [1] -
 45:24
BALLING [1] - 70:19
BANNED [1] - 29:9
BAR [2] - 23:2, 23:3
BASED [1] - 75:3
BASICALLY [1] - 14:4
BASIS [2] - 24:25,
 30:14
BATTLE [4] - 51:23,
 52:1, 62:19
BE [113] - 4:22, 6:8,
 7:18, 10:13, 10:17,
 12:24, 13:9, 14:17,
 15:3, 15:5, 15:6,
 15:13, 16:20, 16:24,
 17:11, 17:14, 17:19,
 18:5, 18:7, 18:8,
 18:9, 18:15, 18:17,
 19:6, 19:7, 19:12,
 19:14, 19:24, 20:13,
 20:25, 24:17, 24:22,
 25:21, 27:16, 27:18,
 30:11, 32:19, 32:22,
 32:24, 33:9, 34:25,
 35:6, 35:20, 36:10,
 36:19, 37:1, 37:23,
 39:5, 39:21, 40:18,
 40:19, 41:2, 42:17,
 43:13, 43:18, 47:18,
 48:22, 48:23, 49:4,
 49:5, 50:18, 50:19,
 50:20, 51:10, 51:23,
 52:24, 53:1, 53:5,
 54:1, 55:18, 56:5,
 57:25, 58:4, 58:14,
 61:11, 61:14, 61:16,
 61:20, 61:21, 62:3,
 63:17, 65:8, 65:18,
 65:23, 66:10, 66:12,
 68:7, 68:23, 69:7,
 69:23, 70:11, 70:25,

71:10, 71:24, 72:7,
73:9, 73:12, 78:14,
79:3, 81:7, 81:21,
83:3, 83:16, 84:10,
85:14, 85:19, 86:11,
90:17
BECAUSE [57] - 3:24,
4:4, 5:9, 5:17, 5:19,
7:1, 7:13, 10:8, 12:6,
12:7, 12:25, 13:9,
13:16, 16:6, 16:24,
18:19, 20:2, 21:9,
23:12, 25:10, 26:18,
28:3, 28:16, 30:16,
32:24, 33:19, 34:4,
34:19, 36:25, 37:24,
40:3, 45:25, 51:24,
52:7, 55:1, 55:11,
56:20, 61:6, 62:8,
62:24, 63:6, 64:6,
65:25, 69:20, 70:4,
70:20, 74:21, 74:22,
78:2, 78:11, 83:1,
84:15, 87:20, 88:9,
89:14, 89:15, 90:14
BECOME [3] - 32:25,
33:11, 82:10
BECOMES [1] - 23:1
BEEN [17] - 8:7, 8:11,
10:14, 13:22, 13:23,
17:20, 23:13, 36:17,
47:11, 58:9, 61:3,
63:6, 63:12, 65:24,
75:4, 76:2, 81:15
BEETLESTONE [2] -
1:11, 89:4
BEFORE [17] - 1:11,
30:10, 30:22, 31:10,
33:12, 34:20, 52:3,
54:23, 57:9, 60:2,
63:23, 66:22, 70:20,
71:3, 71:8, 71:13
BEGIN [2] - 23:22,
84:11
BEGINNING [2] -
71:22, 85:13
BEGINS [1] - 21:13
BEHALF [1] - 3:14
BEING [8] - 31:5,
36:25, 47:8, 47:21,
57:21, 59:2, 80:10,
89:23
BELIEVE [12] - 14:17,
18:20, 21:2, 40:8,
41:23, 42:2, 47:1,
50:2, 79:2, 79:11,
81:9, 81:14
BELIEVES [1] - 21:18
BELLS [1] - 30:16
BENCH [1] - 49:24

BENEFICIAL [1] -
24:10
BENEFIT [3] - 26:16,
27:12, 31:24
BENEFITING [1] -
60:1
BEST [9] - 12:10,
12:12, 27:11, 53:25,
56:19, 62:22, 62:25,
72:10, 85:2
BETWEEN [4] - 16:13,
22:6, 38:1, 48:13
BEYOND [2] - 69:6,
85:18
BIG [1] - 58:23
BILLION [2] - 10:13,
22:4
BIT [3] - 39:18, 51:15
BITES [1] - 26:22
BLOOD [1] - 14:1
BOLD [3] - 84:2, 86:7,
89:1
BOND [1] - 53:2
BOTH [8] - 8:8, 40:8,
42:5, 75:11, 80:8,
80:9, 80:14, 90:14
BOTTOM [1] - 29:22
BOUGHT [1] - 28:25
BOX [1] - 28:17
BRAIN [1] - 12:11
BREAK [1] - 74:21
BREYER [2] - 21:13,
22:22
BRIEF [4] - 29:25,
35:7, 38:25, 45:12
BRIEFS [1] - 52:15
BRING [2] - 8:6, 90:20
BRINGING [2] - 5:9,
56:7
BROAD [1] - 51:21
BROUGHT [5] - 5:2,
8:8, 28:25, 57:6,
57:9
BUCKETS [4] - 20:9,
42:13, 43:22, 44:12
BUCKING [2] - 20:1,
20:2
BUCKS [3] - 71:18,
71:19, 73:15
BUILDING [2] - 32:5,
78:13
BURDEN [7] - 7:22,
40:22, 63:6, 82:9,
84:17, 84:24, 85:18
BUS [1] - 39:11
BUSINESS [93] - 4:13,
4:23, 4:24, 5:4, 5:17,
9:13, 9:17, 11:24,
13:4, 14:14, 15:13,
15:16, 15:20, 23:10,

23:17, 23:23, 25:9,
28:9, 28:14, 28:17,
30:6, 32:6, 34:24,
35:1, 35:10, 36:10,
36:21, 36:23, 37:13,
41:4, 41:15, 41:21,
41:22, 42:3, 42:8,
42:15, 42:20, 43:8,
43:17, 43:19, 43:22,
44:4, 44:8, 44:11,
44:16, 44:17, 45:2,
45:8, 47:12, 48:8,
48:13, 48:17, 51:7,
51:18, 51:20, 54:2,
55:23, 56:7, 56:17,
56:25, 57:1, 57:7,
57:17, 57:19, 57:21,
57:25, 58:1, 58:3,
58:15, 58:17, 58:21,
59:4, 60:18, 61:15,
62:10, 62:11, 63:4,
64:3, 64:4, 64:12,
64:25, 66:6, 66:10,
68:15, 68:21, 68:22,
69:5, 69:20, 79:5,
83:6, 86:6, 90:10
BUSINESSES [10] -
26:1, 26:3, 26:4,
48:14, 48:21, 49:6,
56:8, 59:7, 61:2,
61:3
BUT [74] - 4:11, 6:23,
8:25, 10:7, 10:9,
11:5, 12:12, 13:22,
14:8, 15:2, 15:14,
15:21, 16:7, 19:2,
19:4, 19:6, 20:7,
20:15, 20:18, 23:3,
27:4, 27:16, 30:7,
32:16, 32:19, 34:15,
35:25, 36:17, 37:9,
38:21, 39:9, 40:10,
41:23, 44:5, 44:6,
44:7, 44:20, 45:3,
47:20, 50:18, 51:21,
51:23, 53:10, 53:15,
53:24, 54:23, 56:5,
57:18, 58:21, 59:14,
60:14, 61:10, 61:12,
61:14, 61:18, 62:7,
63:5, 63:16, 63:24,
64:9, 65:18, 66:12,
66:13, 69:23, 70:21,
70:22, 72:21, 73:12,
82:23, 85:15, 86:11,
87:17, 87:23, 88:25
BUY [6] - 35:9, 48:6,
69:16, 70:18, 71:20
BY [31] - 1:24, 1:25,
6:6, 8:11, 9:8, 13:18,
14:4, 14:5, 21:14,

26:17, 30:1, 32:11,
33:6, 34:8, 37:9,
37:20, 38:18, 39:5,
39:21, 47:9, 51:15,
52:9, 57:24, 58:3,
58:6, 58:18, 59:16,
60:3, 80:8, 87:19

C

C.E.O [1] - 5:19
CABINING [1] - 45:5
CALENDAR [1] -
50:24
CALL [5] - 24:10,
47:25, 60:16, 62:16,
62:17
CALLED [1] - 61:24
CAME [2] - 31:15, 60:7
CAMPAIGN [1] - 37:20
CAN [81] - 3:5, 4:3,
6:13, 12:19, 14:17,
16:9, 17:10, 17:14,
18:5, 18:20, 19:7,
19:12, 20:10, 20:13,
20:25, 21:12, 23:15,
23:24, 24:17, 30:11,
31:24, 33:13, 34:23,
35:17, 35:18, 35:24,
37:9, 40:9, 41:2,
41:5, 41:25, 42:17,
44:10, 44:16, 44:17,
44:18, 47:24, 48:5,
48:22, 49:18, 49:19,
49:24, 50:20, 50:25,
53:10, 53:20, 53:24,
55:25, 57:19, 57:22,
58:8, 58:21, 59:4,
62:14, 62:15, 62:16,
62:17, 64:19, 64:21,
65:9, 65:23, 69:8,
72:1, 72:3, 72:6,
72:9, 72:11, 73:21,
75:3, 76:5, 79:15,
81:23, 83:3, 83:15,
84:3, 85:21, 88:10,
89:8, 89:9, 90:6
CAN'T [7] - 11:4,
19:19, 31:8, 32:15,
64:16, 69:16, 75:8
CANCEL [1] - 29:11
CANNOT [7] - 12:24,
19:10, 20:24, 32:24,
39:14, 58:19, 59:21
CAPITAL [1] - 7:13
CAPITALIZE [1] -
79:18
CAPS [1] - 84:3
CAPTURES [3] -
34:21, 77:17

CAREFUL [1] - 57:5
CAREFULLY [2] -
45:4, 57:9
CARS [1] - 70:17
CARVE [2] - 61:18,
69:9
CASE [34] - 1:3, 6:13,
6:15, 7:4, 7:15, 7:19,
8:1, 8:17, 10:3,
13:17, 13:18, 14:7,
14:11, 22:6, 22:20,
34:17, 34:19, 36:2,
39:8, 40:7, 46:14,
48:1, 56:19, 56:24,
57:10, 58:5, 60:4,
66:16, 79:14, 79:16,
79:22, 85:16, 88:13
CASES [6] - 6:5, 8:7,
21:16, 26:19, 36:11,
57:5
CASH [1] - 25:23
CAUGHT [1] - 82:6
CAUSE [13] - 4:25,
9:8, 14:10, 14:25,
15:3, 15:4, 15:6,
44:15, 50:22, 52:9,
79:11, 81:9, 81:14
CAVEAT [1] - 13:16
CAVEATS [3] - 15:19,
16:2, 27:17
CC-8543 [1] - 1:17
CEASE [6] - 11:6,
11:12, 11:23, 12:1,
12:19, 13:5
CENTER [2] - 6:10,
6:25
CERTAIN [6] - 27:3,
55:4, 70:10, 70:13,
71:8, 71:10
CERTAINLY [3] -
12:12, 20:19, 31:25
CERTIFY [1] - 91:10
CFR [2] - 4:14, 5:4
CFRA [2] - 13:16,
14:17
CHALLENGE [1] -
76:2
CHALLENGED [1] -
32:11
CHALLENGING [1] -
77:21
CHAMBERS [2] -
62:15
CHANGE [3] - 30:1,
45:22, 78:22
CHANGES [1] - 45:2
CHECK [1] - 86:3
CHILDREN [1] - 69:14
CHOICE [2] - 23:23,
24:16

CHOSSES [1] - 53:11
CIRCUIT [4] - 6:11, 6:15, 24:11, 24:19
CIRCUMSTANCES [4] - 24:10, 28:3, 29:19, 83:14
CITE [1] - 7:15
CITED [1] - 6:14
CITES [1] - 6:16
CIVIL [1] - 1:3
CLAIM [20] - 5:9, 13:16, 14:2, 14:9, 25:24, 26:21, 27:9, 27:10, 31:9, 33:6, 35:21, 39:18, 40:9, 40:10, 43:9
CLAIMED [2] - 26:2, 26:3
CLAIMS [33] - 5:2, 11:22, 12:2, 13:14, 14:13, 14:14, 25:8, 25:15, 25:18, 26:14, 26:17, 27:4, 27:18, 29:16, 30:2, 30:8, 31:11, 32:10, 34:20, 34:23, 35:7, 35:8, 35:12, 36:9, 36:12, 37:4, 42:6, 42:20, 43:6, 43:24, 58:7, 58:10
CLAIR [2] - 2:2, 3:19
CLARIFICATION [2] - 41:7, 67:15
CLARIFY [4] - 16:16, 35:4, 36:4, 54:17
CLARITY [1] - 4:3
CLARK [1] - 37:9
CLASSIC [1] - 4:4
CLAUSE [2] - 14:16, 67:16
CLEAN [4] - 78:9, 79:8, 82:12, 83:9
CLEAR [10] - 35:20, 46:13, 46:14, 47:16, 68:8, 74:3, 75:16, 75:21, 91:1, 91:2
CLEARLY [3] - 16:14, 25:10, 40:25
CLERK [5] - 3:1, 49:17, 63:11, 77:8, 78:7
CLICK [2] - 37:17, 38:2
CLICKS [5] - 37:17, 37:19, 37:22, 38:3
CLIENT [4] - 31:16, 31:23, 36:18, 59:9
CLIENTS [3] - 36:20, 37:18
CLOSE [3] - 39:7, 42:4, 43:7
CO [1] - 70:24
CO-MINGLED [1] - 70:24
COACHING [2] - 47:12, 60:18
COHORT [3] - 62:11, 68:19, 69:9
COLLEGE [4] - 28:18, 32:22, 33:9, 33:10
COLOR [1] - 78:13
COME [17] - 10:21, 14:23, 31:17, 32:16, 33:10, 47:5, 63:13, 65:9, 68:9, 68:10, 70:13, 70:18, 73:17, 75:11, 75:18, 77:19, 82:10
COMES [7] - 12:18, 31:8, 36:15, 36:19, 59:1, 61:1, 65:6
COMING [4] - 19:22, 32:7, 39:10, 39:14
COMMENT [1] - 26:6
COMMERCE [1] - 24:6
COMMISSION [15] - 1:3, 1:16, 3:4, 3:11, 4:6, 6:9, 7:16, 21:15, 21:19, 21:21, 22:8, 22:18, 22:25, 23:6
COMMISSION'S [3] - 6:7, 52:23, 81:3
COMMITTING [1] - 22:10
COMMUNICATIONS [1] - 28:20
COMPANY [5] - 47:11, 57:13, 57:14, 69:8
COMPELLING [1] - 46:15
COMPLAINED [3] - 28:9, 28:15, 28:22
COMPLAINT [9] - 14:12, 25:13, 25:16, 31:15, 52:21, 53:3, 78:17, 80:4, 89:20
COMPLETE [2] - 34:24, 55:7
COMPLETELY [3] - 35:12, 58:6, 81:24
COMPLIANCE [1] - 62:2
COMPLICATED [1] - 28:10
COMPLY [2] - 12:23, 47:3
COMPONENT [2] - 38:22, 39:15
COMPONENTS [1] - 76:23
COMPUTER [3] - 1:24, 1:25, 87:3
COMPUTER-AIDED [1] - 1:25
CONCERN [2] - 48:18, 61:10
CONCERNED [2] - 21:25, 51:17
CONCERNING [1] - 8:1
CONCERNS [1] - 76:23
CONCLUDE [1] - 21:23
CONCLUDED [1] - 6:21
CONCLUSION [1] - 46:17
CONDUCT [5] - 12:20, 12:22, 13:6, 24:16, 46:15
CONFERENCE [1] - 74:20
CONFIRM [2] - 29:20, 64:7
CONFIRMED [1] - 29:16
CONFUSED [1] - 89:7
CONNECTED [1] - 59:3
CONNED [1] - 29:11
CONSENT [2] - 70:10, 73:22
CONSERVATIVE [1] - 37:24
CONSIDER [4] - 20:7, 22:16, 39:3, 66:21
CONSIDERED [4] - 57:9, 80:4, 81:2, 89:20
CONSIDERING [2] - 6:6, 52:23
CONSULTED [1] - 47:8
CONSULTING [7] - 32:3, 32:6, 47:13, 48:9, 48:16, 59:24, 60:18
CONSUMER [23] - 4:15, 5:5, 10:4, 10:5, 14:6, 14:11, 17:8, 27:2, 27:5, 28:12, 28:15, 28:24, 29:3, 29:6, 29:18, 31:2, 31:4, 37:6, 38:7, 40:11, 47:4, 60:7, 62:4
CONSUMER'S [1] - 27:18
CONSUMER-
FACING [2] - 60:7, 62:4
CONSUMERS [37] - 10:6, 13:1, 13:11, 14:5, 16:9, 16:21, 17:5, 17:18, 17:20, 19:23, 24:9, 24:15, 24:23, 25:10, 25:19, 25:25, 26:5, 28:2, 28:6, 28:7, 28:19, 29:10, 30:8, 30:12, 34:16, 37:8, 38:11, 39:2, 42:7, 46:17, 48:5, 58:22, 58:25, 59:9, 59:15, 61:15, 68:23
CONTACT [1] - 62:14
CONTAINS [1] - 39:7
CONTEST [1] - 72:19
CONTEXT [22] - 4:1, 7:6, 7:12, 26:23, 27:5, 31:11, 33:2, 33:3, 33:5, 33:11, 33:19, 34:3, 34:15, 34:19, 35:5, 36:5, 40:14, 40:16, 40:19, 40:20, 45:22, 85:19
CONTINUATION [2] - 57:1, 58:1
CONTINUE [9] - 58:7, 58:13, 59:7, 61:11, 61:14, 64:21, 64:24, 69:8, 76:6
CONTINUED [3] - 2:1, 58:4, 59:14
CONTINUES [1] - 57:20
CONTINUING [5] - 22:21, 46:19, 57:7, 58:9, 61:18
CONTINUOUS [2] - 30:2, 58:23
CONTINUOUSLY [2] - 58:10, 58:11
CONTRACT [6] - 5:6, 12:2, 13:14, 14:3, 14:4, 14:15
CONTRACTORS [1] - 49:2
CONTRAST [1] - 46:18
CONTROL [1] - 87:7
CONVERSATION [1] - 34:18
CONVEYED [4] - 24:24, 30:13, 31:2, 32:18
COOPERATION [1] - 67:16
COPY [3] - 49:25, 90:14, 90:21
CORP [1] - 25:3
CORPORATE [4] - 47:25, 69:24, 70:3, 70:4
CORPORATION [1] - 21:17
CORRECT [31] - 7:6, 9:5, 9:10, 9:14, 9:18, 10:23, 11:7, 12:3, 13:15, 15:11, 15:16, 15:17, 15:23, 16:10, 17:15, 19:21, 40:15, 43:3, 46:8, 46:9, 47:23, 48:12, 75:7, 76:3, 76:25, 79:9, 82:13, 82:22, 85:20, 91:11
CORRESPONDENCE [1] - 52:13
COST [2] - 38:3, 73:15
COSTS [2] - 37:14, 38:4
COULD [26] - 11:6, 11:22, 11:25, 19:1, 19:2, 25:11, 26:7, 26:16, 27:13, 32:19, 41:6, 41:14, 44:14, 44:15, 44:20, 45:22, 49:5, 57:24, 58:3, 66:12, 70:11, 72:8, 78:8, 81:13, 84:14
COUNSEL [11] - 1:19, 2:4, 2:8, 3:6, 63:16, 70:12, 71:7, 72:4, 72:17, 75:18, 77:16
COUNTER [1] - 46:7
COUNTS [4] - 42:4, 42:5, 42:11, 42:15
COUPLE [3] - 31:7, 52:4, 66:5
COURSE [3] - 28:13, 71:6, 75:17
COURT [263] - 1:1, 1:21, 3:1, 3:2, 3:12, 3:17, 3:20, 4:10, 4:20, 5:8, 5:15, 5:16, 5:18, 5:25, 6:21, 7:9, 8:5, 8:12, 8:25, 9:7, 9:12, 9:16, 9:20, 9:24, 10:7, 10:12, 11:1, 11:11, 11:15, 11:18, 12:4, 12:13, 13:13, 13:21, 14:19, 15:3, 15:9, 15:12, 15:19, 15:25, 16:4, 16:12, 17:1, 17:13, 17:16, 17:21, 17:25, 18:2, 18:16, 18:22, 19:15, 19:18, 19:25,

21:4, 21:8, 21:16,
21:21, 22:3, 22:8,
22:10, 22:14, 22:15,
22:22, 24:1, 24:20,
25:12, 25:17, 26:11,
27:20, 30:10, 31:20,
32:17, 33:12, 33:17,
33:24, 34:2, 34:21,
35:25, 36:22, 38:10,
38:13, 39:20, 40:14,
40:16, 41:8, 41:12,
42:12, 42:16, 42:22,
43:1, 43:5, 43:12,
43:15, 43:20, 44:5,
44:23, 45:11, 45:16,
45:21, 46:10, 46:23,
47:14, 48:10, 49:7,
49:18, 49:21, 49:23,
50:1, 50:4, 50:9,
50:12, 51:8, 51:11,
51:14, 52:5, 52:7,
53:10, 53:11, 53:14,
53:22, 54:5, 54:12,
54:15, 54:19, 54:22,
55:9, 55:12, 55:15,
57:24, 58:2, 58:8,
58:19, 59:17, 60:8,
61:5, 63:11, 63:12,
64:8, 64:10, 64:15,
64:23, 65:1, 65:5,
65:12, 65:14, 65:21,
66:9, 66:17, 66:25,
67:4, 67:7, 67:8,
67:17, 67:22, 67:24,
68:3, 68:6, 68:16,
69:20, 69:25, 70:8,
70:13, 70:15, 71:8,
71:14, 71:17, 72:2,
72:5, 72:8, 72:10,
72:18, 72:19, 72:21,
73:2, 73:10, 73:23,
73:25, 74:8, 74:12,
74:16, 74:19, 74:23,
75:5, 75:10, 75:22,
76:5, 76:8, 76:12,
76:17, 76:22, 77:1,
77:5, 77:8, 77:9,
77:24, 78:1, 78:12,
78:17, 78:20, 78:24,
79:4, 79:10, 79:17,
79:21, 79:25, 80:3,
80:4, 80:17, 80:22,
80:25, 81:8, 81:11,
82:1, 82:4, 82:14,
82:17, 82:20, 82:23,
83:1, 83:5, 83:10,
83:19, 83:23, 84:1,
84:6, 84:7, 84:8,
84:9, 84:12, 84:14,
84:16, 84:21, 85:12,
85:22, 85:24, 86:1,

86:9, 86:16, 86:20,
86:22, 87:5, 87:7,
87:10, 87:15, 87:19,
87:22, 88:1, 88:3,
88:12, 88:15, 88:20,
89:12, 89:20, 89:24,
90:4, 90:13, 91:2,
91:4, 91:5, 91:14
COURT'S [3] - 45:10,
63:18, 63:19
COURTHOUSE [1] -
1:21
COURTROOM [3] -
1:9, 75:12, 78:3
COURTS [4] - 8:11,
25:1, 34:12, 39:3
CREATED [1] - 30:1
CREATES [2] - 39:3,
39:6
CREATING [1] - 26:3
CRFA [6] - 12:1,
13:14, 14:2, 23:12,
79:5, 83:6
CURRENTLY [1] -
47:8
CUSTOMER [1] -
38:17
CUSTOMERS [12] -
34:5, 34:8, 47:8,
48:11, 56:1, 56:10,
56:11, 61:19, 61:21,
61:22, 62:12, 68:24
CYBERSPACE.COM
[2] - 24:18, 39:9

D

D.C [1] - 2:7
DAMAGE [2] - 14:11,
80:18
DAMAGES [2] - 13:12,
16:16
DATA [2] - 86:19, 87:3
DATE [5] - 50:25,
52:18, 88:4, 88:11,
91:14
DATES [1] - 53:25
DAY [7] - 48:22, 83:24,
87:10, 88:11, 88:12,
88:16, 89:2
DAYS [12] - 25:20,
27:24, 50:24, 52:18,
53:4, 53:7, 53:10,
85:5, 85:21, 88:4,
88:7
DAYS' [1] - 15:4
DBA [1] - 47:25
DC [1] - 1:18
DEAL [2] - 42:5, 71:18
DEALS [2] - 42:6

DECEPTIVE [9] - 24:5,
24:7, 30:1, 34:14,
34:15, 34:16, 42:19,
43:5, 43:23
DECIDE [1] - 4:5
DECIDED [1] - 44:24
DECISION [1] - 23:12
DECLARATION [4] -
28:5, 32:8, 32:13,
89:21
DECLARATIONS [7] -
31:16, 31:23, 35:14,
37:6, 38:7, 58:8,
80:5
DEFENDANT [35] -
2:4, 2:8, 5:19, 12:5,
12:23, 22:4, 22:9,
22:12, 22:21, 24:25,
30:13, 30:20, 31:1,
34:24, 35:13, 38:18,
38:22, 40:19, 48:1,
52:25, 55:7, 56:24,
58:7, 59:16, 61:25,
63:3, 64:21, 64:24,
69:4, 71:12, 80:14,
85:5, 86:13, 86:24,
86:25
DEFENDANT'S [15] -
4:23, 9:17, 15:20,
26:5, 28:8, 29:15,
30:2, 37:16, 44:17,
55:23, 56:16, 64:13,
69:5, 76:24, 77:17
DEFENDANTS [21] -
1:7, 3:15, 3:16, 7:11,
25:6, 25:8, 29:12,
32:3, 32:6, 33:18,
36:7, 46:18, 47:9,
55:6, 55:24, 59:25,
73:7, 80:9, 81:9,
83:25, 86:10
DEFENDANTS' [1] -
4:21
DEFENSE [17] - 3:12,
10:19, 11:2, 11:4,
18:8, 18:16, 23:13,
30:10, 46:6, 46:24,
59:18, 61:19, 63:16,
70:12, 71:7, 72:4,
72:17
DEFINITELY [1] - 8:18
DEFRAUDED [1] -
17:5
DELETE [4] - 82:24,
83:8, 85:23, 86:1
DELETED [1] - 83:3
DELETING [2] - 83:17,
86:17
DELIVER [1] - 85:6
DEMONSTRATE [2] -

31:25, 32:1
DENSE [1] - 28:16
DEPARTMENT [1] -
47:15
DEPOSITION [3] -
54:7, 54:8, 55:5
DEPOSITIONS [1] -
54:10
DEPUTY [1] - 49:17
DESCRIBED [1] -
28:11
DESIST [6] - 11:6,
11:12, 11:24, 12:1,
12:19, 13:6
DESPITE [1] - 53:6
DESTRUCTION [2] -
86:18, 87:3
DESTRUCTIVE [1] -
49:5
DETAIL [1] - 22:14
DETAILED [1] - 73:8
DETAILS [3] - 15:2,
15:6, 53:21
DETERMINATION [1]
- 71:15
DETERMINE [5] - 6:7,
33:6, 68:14, 71:12,
83:7
DETERMINED [4] -
34:12, 83:12, 84:1,
84:21
DETERMINES [3] -
22:25, 23:6, 65:7
DETERMINING [1] -
39:1
DETRIMENTAL [1] -
48:20
DEVIL'S [1] - 15:1
DIAGRAM [2] - 48:11,
56:4
DICTATED [1] - 84:11
DICTIONARY [1] -
60:16
DID [17] - 8:5, 14:21,
22:14, 27:11, 29:25,
37:24, 38:3, 38:17,
48:16, 49:15, 75:24,
78:22, 78:23, 83:6,
84:16, 88:1
DIDN'T [5] - 32:4,
44:19, 49:13, 50:12,
63:22
DIFFERENT [6] - 6:4,
6:22, 40:5, 47:15,
69:21, 88:8
DIFFERS [2] - 6:18,
6:19
DIFFICULT [1] - 58:13
DIRECT [1] - 20:20
DIRECTED [1] - 90:9

DIRECTING [1] -
22:12
DIRECTION [1] -
63:20
DIRECTLY [2] - 9:1,
70:6
DISABLED [1] - 69:15
DISCLAIMER [3] -
27:15, 29:21, 34:13
DISCLOSURE [2] -
5:5, 42:24
DISCLOSURES [6] -
39:7, 43:16, 43:24,
85:4, 85:13, 86:2
DISCOVERY [17] -
4:24, 9:4, 15:9,
44:15, 51:3, 51:4,
51:6, 54:1, 54:6,
54:14, 54:23, 54:24,
55:1, 55:3, 55:5,
55:7, 55:17
DISCUSS [3] - 50:16,
52:2, 54:2
DISCUSSED [1] - 52:9
DISCUSSION [9] - 4:2,
37:12, 45:8, 49:22,
55:21, 63:24, 75:13,
78:16, 87:9
DISCUSSIONS [1] -
63:25
DISGORGED [1] -
10:13
DISGORGEMENT [5]
- 10:22, 20:21,
21:23, 22:1, 22:5
DISPARAGING [2] -
14:7, 14:16
DISPLEASED [1] -
59:23
DISPUTE [1] - 19:4
DISRUPTIVE [1] - 49:4
DISSATISFACTION
[1] - 61:4
DISSIPATED [1] - 17:9
DISSOLVED [1] - 53:5
DISTINCTION [1] -
16:13
DISTINCTIONS [1] -
22:6
DISTRICT [4] - 1:1,
1:2, 79:17, 89:4
DIVISION [1] - 1:16
DO [65] - 3:21, 5:11,
5:21, 7:5, 12:10,
14:20, 14:21, 19:1,
19:2, 19:19, 20:7,
20:10, 20:11, 20:12,
23:24, 27:16, 30:19,
35:17, 35:18, 37:7,
37:14, 41:24, 42:2,

44:6, 44:8, 44:19,
47:20, 47:21, 49:12,
50:6, 51:16, 53:24,
54:5, 59:22, 62:19,
62:22, 63:16, 66:18,
68:5, 69:8, 69:11,
70:8, 70:9, 70:12,
71:19, 72:3, 72:8,
73:2, 73:19, 74:25,
75:23, 76:17, 77:5,
78:11, 78:25, 79:15,
81:1, 82:11, 85:21,
87:7, 87:12, 88:12,
88:25, 89:9

DOCKET [4] - 74:13,
74:23, 85:17, 90:17

DOCKETED [1] -
90:22

DOCUMENT [3] -

81:25, 86:23, 89:5

DOCUMENTS [5] -

30:5, 42:25, 54:25,

56:25, 64:13

DOES [19] - 6:12,

7:16, 7:19, 10:20,

15:15, 16:7, 21:23,

23:2, 23:3, 30:18,

30:19, 32:16, 48:25,

51:8, 68:23, 69:10,

70:17, 71:17, 84:7

DOING [6] - 10:8,

15:7, 20:17, 65:14,

83:19

DOLLAR [2] - 26:3,

26:4

DOLLARS [4] - 29:2,

34:23, 35:2, 38:2

DON'T [51] - 8:25,

11:25, 12:13, 14:16,

16:24, 18:10, 18:19,

19:16, 20:5, 20:14,

21:2, 21:6, 25:4,

27:7, 30:21, 33:3,

33:9, 33:15, 34:17,

36:11, 38:14, 38:15,

39:15, 39:16, 39:19,

40:10, 41:23, 45:19,

48:6, 51:20, 51:23,

55:18, 57:18, 61:10,

61:11, 61:12, 62:23,

70:23, 73:13, 74:17,

74:24, 75:8, 78:2,

78:3, 78:13, 82:1,

87:20, 88:25, 90:4,

90:16

DONE [6] - 32:5,

70:20, 73:11, 75:12,

83:16, 85:19

DOWN [10] - 12:8,

13:24, 27:13, 47:4,

57:16, 60:7, 60:22,

61:12, 62:4, 68:10

DRAFT [2] - 73:4, 75:3

DRAINED [1] - 81:24

DRAW [1] - 18:23

DRILL [1] - 12:8

DRIVE [2] - 13:17

DROPPED [1] - 81:25

DRYE [1] - 2:6

DURATION [1] - 52:17

DURING [4] - 17:19,

57:2, 58:1, 83:24

E

E-MAILED [1] - 77:7

EACH [7] - 26:23,

33:12, 55:6, 60:13,

81:5, 85:5, 90:21

EARLIER [6] - 13:2,

31:18, 53:23, 68:1,

77:15, 90:25

EARLY [4] - 13:23,

37:7, 71:22, 87:12

EARN [5] - 25:11,

35:2, 35:11, 35:23

EARNING [1] - 38:6

EARNINGS [16] -

14:13, 25:15, 27:18,

34:20, 35:6, 35:8,

35:21, 42:5, 42:6,

42:20, 43:6, 43:9,

43:23, 58:10

EASIER [3] - 6:23,

72:22, 83:11

EASTERN [1] - 1:2

EASY [1] - 9:4

ECF [1] - 38:25

ECOMMERCE [5] -

25:20, 26:1, 28:17,

37:15, 59:3

EDITS [1] - 79:15

EDUCATION [3] -

32:2, 47:12, 48:16

EEB [3] - 4:7, 5:16,

5:20

EEB'S [1] - 37:18

EFFECT [2] - 24:16,

47:4

EFFECTING [1] - 24:6

EFFORT [1] - 61:14

EGREGIOUS [1] -

34:22

EITHER [4] - 12:6,

34:9, 59:12, 73:6

ELECTRONIC [1] -

86:19

ELECTRONICS [1] -

78:3

ELEMENT [5] - 27:20,

30:23, 31:9, 33:16,

36:25

ELEMENTS [5] - 4:1,

6:1, 23:20, 24:4,

24:13

ELSE [8] - 16:19,

17:21, 32:19, 67:12,

69:10, 74:16, 86:4,

90:23

EMERGENCY [1] -

4:16

EMPIRE [3] - 1:6, 3:4,

4:7

ENCOMPASSES [1] -

75:19

END [1] - 39:4

ENFORCE [1] - 11:22

ENFORCES [1] -

21:19

ENGAGE [2] - 62:1,

81:10

ENGINEERS [1] - 49:1

ENJOIN [1] - 4:20

ENOUGH [1] - 47:19

ENSURE [10] - 17:8,

17:10, 17:14, 17:23,

18:4, 57:14, 57:20,

57:21, 58:13, 59:15

ENSURES [2] - 58:14,

58:15

ENSURING [6] - 19:6,

19:11, 20:13, 20:25,

58:22, 82:18

ENTER [3] - 60:21,

64:10, 90:7

ENTERED [3] - 53:13,

66:14, 71:7

ENTIRE [8] - 26:23,

27:2, 27:4, 33:5,

34:15, 35:5, 41:10,

47:10

ENTIRETY [2] - 27:14

ENTITIES [1] - 86:11

ENTITLED [3] - 29:14,

73:7, 91:12

ENTITY [1] - 56:2

ENTRY [3] - 52:18,

77:18, 88:5

ENVISIONING [1] -

68:4

EQUATION [1] - 45:2

EQUITABLE [8] -

7:17, 8:10, 8:13,

8:24, 10:5, 21:22,

21:25, 23:2

EQUITIES [5] - 6:6,

13:8, 45:24, 49:10,

52:23

EQUITY [3] - 6:19,

81:2, 83:11

ESQUIRE [4] - 1:15,

1:15, 2:2, 2:6

ESSENTIALLY [4] -

16:4, 43:20, 70:21,

84:23

ET [1] - 1:6

EVALUATE [2] -

23:14, 73:13

EVEN [13] - 11:1, 11:4,

12:22, 19:19, 29:5,

29:6, 34:12, 35:3,

39:6, 47:10, 48:19,

72:3, 84:3

EVENING [1] - 33:23

EVER [1] - 88:24

EVERY [3] - 32:24,

36:25, 37:17

EVERYBODY [2] -

44:14, 44:18

EVERYONE [2] -

18:25, 89:6

EVERYTHING [10] -

40:12, 47:16, 62:8,

62:21, 63:2, 68:10,

68:12, 69:10, 76:2,

89:11

EVERYWHERE [2] -

33:4, 35:17

EVIDENCE [5] - 30:22,

42:21, 59:22, 61:3,

77:23

EX [1] - 85:8

EXACT [2] - 42:17,

67:1

EXACTLY [3] - 43:4,

66:14, 75:24

EXAMPLE [7] - 28:7,

28:12, 28:24, 29:20,

30:6, 32:21, 34:22

EXAMPLES [1] -

25:15

EXCEEDING [2] -

53:3, 53:16

EXCEPT [1] - 43:7

EXCUSE [1] - 28:25

EXHAUSTED [2] -

12:11, 65:14

EXHIBIT [5] - 32:9,

32:10, 50:10, 50:13,

89:22

EXHIBITS [1] - 80:6

EXISTING [1] - 62:12

EXPECT [2] - 33:9,

73:12

EXPEDITED [7] - 54:9,

54:14, 54:23, 54:24,

55:2, 55:4, 55:16

EXPENSES [11] -

37:13, 58:16, 58:17,

64:22, 65:8, 71:10,

71:23, 72:3, 72:20,

73:9, 73:18

EXPENSIVE [1] -

37:15

EXPERIENCING [1] -

79:20

EXPERT [7] - 37:13,

37:23, 37:25, 38:14,

38:15, 38:16

EXPERT'S [1] - 28:5

FASHION [1] - 14:21
FAULT [2] - 80:23, 81:24
FAVOR [1] - 49:11
FDC [3] - 24:10, 51:22, 67:9
FEDERAL [13] - 1:3, 1:16, 3:3, 3:10, 4:6, 5:8, 5:10, 6:9, 21:14, 21:16, 22:7, 53:7, 74:23
FEED [1] - 60:19
FEEDING [1] - 70:22
FEES [1] - 71:11
FELT [1] - 28:16
FEW [2] - 35:22, 90:22
FIGHT [1] - 55:18
FIGURE [3] - 26:7, 27:1, 68:7
FIGURES [3] - 25:25, 29:22, 29:23
FILE [3] - 49:15, 77:2, 77:3
FILED [13] - 4:6, 13:2, 22:2, 31:18, 38:18, 49:13, 52:22, 53:3, 60:4, 80:6, 80:12, 89:14, 89:22
FILING [1] - 7:25
FINAL [2] - 49:9, 74:20
FINANCIAL [3] - 85:4, 85:12, 86:2
FIND [6] - 23:7, 40:20, 49:9, 55:3, 60:15, 86:22
FINDING [1] - 81:22
FINDINGS [8] - 66:7, 66:15, 66:17, 66:23, 67:11, 80:3, 82:16, 89:19
FINDS [3] - 80:14, 82:17, 84:17
FINE [13] - 39:21, 54:22, 55:17, 55:18, 81:9, 81:11, 85:15, 87:13, 87:16, 87:17, 88:14
FINE-TUNED [1] - 55:18
FINISHED [1] - 52:5
FIRST [17] - 7:22, 11:6, 22:7, 23:23, 29:13, 31:7, 31:11, 33:7, 35:4, 57:3, 69:2, 74:12, 74:14, 77:2, 80:3, 88:23
FIVE [6] - 23:22, 32:23, 33:8, 37:21, 85:5, 85:21
FLOW [2] - 25:23, 56:21
FLOWING [1] - 14:1
FOCUS [3] - 3:21, 10:8, 36:2
FOCUSED [3] - 7:1, 36:25, 45:25
FOCUSES [1] - 22:15
FOCUSING [3] - 30:25, 36:24, 43:25
FOLKS [3] - 32:1, 74:24, 77:11
FOOTNOTE [1] - 39:8
FOR [115] - 1:2, 1:19, 2:4, 2:8, 3:24, 5:7, 6:19, 6:24, 7:6, 7:15, 8:2, 8:10, 8:13, 8:15, 8:16, 8:18, 8:20, 8:21, 8:22, 8:23, 9:3, 9:7, 9:16, 9:20, 9:22, 9:25, 10:15, 10:18, 11:2, 11:13, 12:18, 12:25, 13:1, 13:10, 13:11, 13:14, 14:17, 14:18, 17:1, 19:24, 20:9, 21:25, 22:11, 23:15, 24:25, 25:25, 27:21, 28:7, 28:12, 28:17, 28:20, 28:24, 29:20, 30:5, 30:14, 31:7, 31:20, 33:14, 34:22, 35:11, 35:18, 36:8, 36:18, 37:4, 37:21, 38:19, 38:23, 40:5, 40:18, 40:24, 40:25, 42:10, 46:16, 51:1, 54:18, 57:1, 59:21, 59:24, 60:21, 64:21, 66:1, 67:14, 68:3, 69:18, 69:23, 69:25, 70:2, 70:3, 70:5, 70:13, 71:8, 71:11, 71:12, 71:19, 72:3, 72:15, 72:19, 74:6, 75:7, 76:19, 78:2, 78:12, 80:4, 80:5, 80:9, 81:14, 83:24, 83:25, 89:21, 90:2, 90:21
FORECLOSE [1] - 8:6
FOREGOING [1] - 91:10
FOREIGN [2] - 85:14, 86:2
FORGOT [1] - 13:19
FORM [2] - 14:3, 73:10
FORMER [1] - 31:15
FORTH [4] - 22:18, 30:20, 72:17, 84:4
FORWARD [1] - 68:19
FOUND [3] - 24:18, 24:21, 66:9
FOUNDER [1] - 55:25
FOUR [2] - 6:3, 88:8
FOUR-PART [1] - 6:3
FRAMEWORK [1] - 19:3
FRAUD [4] - 57:22, 58:6, 58:13, 59:14
FRAUDULENT [1] - 46:20
FREELAND [75] - 2:6, 3:13, 3:14, 3:18, 4:9, 5:13, 5:23, 7:8, 12:10, 12:15, 13:15, 13:25, 15:1, 15:8, 15:11, 15:17, 15:23, 16:2, 16:10, 16:23, 18:17, 18:19, 19:13, 19:16, 19:21, 21:2, 21:6, 26:15, 31:6, 31:22, 32:20, 33:22, 34:1, 38:24, 40:8, 40:15, 44:21, 46:9, 46:25, 47:18, 48:12, 53:20, 59:19, 60:11, 65:11, 65:13, 66:3, 66:11, 66:20, 67:3, 67:5, 67:13, 67:18, 67:25, 69:12, 69:22, 74:1, 74:17, 75:14, 76:3, 76:10, 76:14, 77:13, 81:17, 82:6, 85:25, 87:13, 87:24, 88:2, 88:14, 89:7, 89:18, 90:12, 90:24, 91:3
FREEZE [64] - 4:22, 8:16, 8:22, 9:25, 10:3, 10:20, 10:24, 11:5, 11:9, 12:25, 13:9, 13:10, 14:18, 16:5, 16:6, 16:8, 16:18, 16:25, 17:12, 17:22, 18:4, 18:13, 18:15, 19:4, 19:10, 19:14, 20:8, 20:9, 20:24, 40:24, 41:10, 44:3, 44:6, 45:3, 45:4, 45:19, 50:18, 52:8, 63:18, 63:20, 64:20, 65:1, 65:2, 65:6, 65:18, 65:19, 65:22, 66:1, 66:2, 67:14, 68:11, 69:23, 70:3, 70:12, 71:7, 71:19, 72:7, 72:23, 72:24, 73:1, 74:5, 75:8, 78:10
FREEZING [1] - 17:3
FRIDAY [2] - 33:24, 89:16
FROM [54] - 3:5, 3:12, 4:3, 6:18, 6:19, 6:23, 14:6, 14:20, 17:4, 22:9, 22:24, 23:5, 23:13, 27:9, 27:10, 28:5, 31:16, 32:3, 32:8, 32:23, 33:4, 33:8, 34:4, 34:5, 34:21, 35:25, 39:17, 46:21, 49:12, 49:24, 52:18, 56:10, 56:21, 56:24, 57:13, 59:6, 59:10, 59:17, 59:25, 60:1, 69:21, 70:11, 72:4, 72:25, 74:7, 77:24, 80:14, 81:12, 87:11, 88:4, 91:11
FRONT [2] - 38:15, 48:4
FROZEN [3] - 16:20, 19:23, 69:2
FTC [43] - 3:8, 4:1, 4:13, 4:16, 4:18, 4:20, 5:3, 5:9, 6:3, 6:12, 6:14, 7:14, 7:18, 8:6, 8:8, 11:21, 12:22, 12:25, 17:1, 18:15, 22:20, 24:18, 25:3, 26:20, 27:6, 30:15, 31:13, 32:11, 38:24, 45:16, 53:8, 75:17, 77:16, 77:24, 81:4, 81:15, 82:8, 82:17, 82:19, 84:17, 84:19, 84:25, 86:13
FTC'S [3] - 13:18, 14:11, 77:22
FULL [1] - 63:23
FUNDAMENTAL [2] - 63:17, 65:4
FUNDS [5] - 70:14, 71:9, 71:10, 71:16, 73:1
FUNNEL [1] - 26:7
FURTHER [6] - 26:5, 46:21, 59:16, 85:4, 86:7, 88:3
FUTURE [3] - 10:9, 10:18, 22:10

G

GALLON [1] - 69:16
GAVE [2] - 25:24, 85:1
GENERAL [1] - 27:16
GENERALLY [2] - 13:21, 24:6
GENERATED [1] - 28:23
GET [32] - 4:3, 11:5, 11:18, 11:22, 11:25, 12:19, 16:7, 27:11, 30:7, 30:21, 31:25, 32:12, 33:13, 39:12, 47:23, 49:18, 51:22, 51:25, 61:15, 61:16, 62:1, 63:2, 66:22, 74:23, 75:12, 75:23, 77:9, 85:16, 89:14, 90:15, 90:16, 90:21
GETS [1] - 13:1
GIVE [7] - 12:17, 16:9, 50:25, 62:16, 67:1, 78:5
GIVEN [22] - 7:21, 13:22, 17:13, 18:8, 18:18, 19:4, 19:9, 21:8, 31:4, 34:15, 40:23, 40:24, 44:9, 45:7, 50:23, 55:17, 56:9, 62:20, 62:21, 85:7, 86:13, 87:11
GIVING [2] - 51:24, 53:25
GLAD [1] - 82:6
GLIGOR [2] - 1:20, 91:15
GO [37] - 3:23, 7:9, 10:9, 17:1, 23:20, 23:22, 24:2, 25:4, 25:5, 25:11, 27:1, 27:13, 28:17, 33:6, 37:9, 41:18, 41:22, 44:10, 45:11, 45:24, 48:16, 49:24, 52:3, 52:8, 54:23, 57:13, 57:15, 57:19, 60:14, 65:12, 68:22, 69:16, 75:1, 77:9, 86:23, 89:8, 90:19
GOES [5] - 31:10, 32:9, 32:10, 32:25, 69:10
GOING [92] - 3:20, 3:23, 4:2, 4:3, 5:25, 7:9, 7:22, 10:19, 12:4, 16:15, 18:10, 19:2, 20:6, 21:8, 21:10, 23:11, 23:20, 27:23, 30:21, 32:25, 33:10, 35:1, 35:3, 35:15, 36:1, 38:19, 38:22, 44:6, 46:6, 47:5, 48:20, 50:15, 50:17, 50:22, 51:16, 51:19, 51:24, 52:2, 52:7, 53:22, 55:20, 57:17, 57:19, 58:20,

59:21, 60:19, 61:6,
61:8, 62:8, 62:13,
65:18, 66:14, 68:15,
69:6, 69:23, 70:25,
73:3, 73:4, 73:5,
73:15, 73:17, 73:19,
73:20, 74:9, 74:20,
75:22, 75:23, 75:25,
76:1, 77:2, 78:12,
78:14, 79:18, 79:25,
82:7, 82:10, 82:11,
83:8, 83:20, 85:8,
85:16, 85:17, 88:6,
88:9, 88:17, 89:1,
89:15, 90:16, 90:19,
90:20
GONE [1] - 26:16
GOOD [7] - 3:2, 3:13,
62:3, 71:17, 79:11,
81:9, 81:14
GORDON [2] - 2:2,
3:14
GOT [24] - 11:6, 11:11,
20:4, 20:5, 20:11,
27:9, 29:8, 30:21,
31:10, 31:20, 31:22,
33:4, 33:20, 37:20,
48:3, 49:8, 50:24,
52:8, 52:9, 62:14,
66:18, 68:11, 70:21,
85:3
GOTTEN [3] - 36:23,
50:7, 54:20
GOVERNMENT [14] -
7:22, 30:23, 33:17,
40:21, 49:11, 49:13,
56:18, 61:20, 61:22,
62:9, 63:1, 63:6,
87:22, 89:16
GOVERNMENT'S [1] -
7:21
GRADUATE [1] - 33:8
GRADUATED [1] -
32:23
GRANTED [6] - 8:11,
22:11, 53:2, 62:21,
67:8, 87:24
GREAT [2] - 22:14,
37:20
GREATER [2] - 7:3,
46:2
GRIER [123] - 1:15,
3:7, 3:8, 5:14, 5:24,
7:7, 7:24, 8:15, 9:6,
9:11, 9:15, 9:19,
9:23, 10:2, 10:23,
11:8, 11:17, 12:3,
17:6, 17:15, 17:17,
17:22, 18:1, 18:12,
34:10, 36:4, 37:2,
38:11, 41:6, 41:9,
45:13, 49:15, 49:19,
50:11, 51:5, 51:10,
51:12, 52:3, 52:6,
53:9, 54:4, 54:9,
54:13, 54:16, 54:21,
55:2, 55:10, 55:13,
56:22, 59:20, 63:14,
64:9, 64:17, 64:24,
65:3, 67:20, 67:23,
70:2, 70:10, 71:5,
72:1, 72:6, 72:15,
72:22, 73:21, 73:24,
74:2, 74:11, 74:15,
75:2, 75:6, 76:13,
76:15, 76:21, 76:25,
77:4, 77:7, 77:25,
78:5, 78:19, 78:22,
79:2, 79:7, 79:19,
79:22, 80:2, 80:16,
80:20, 80:23, 81:7,
81:19, 82:3, 82:5,
82:12, 82:15, 82:22,
82:24, 83:3, 83:8,
83:17, 83:21, 84:5,
84:7, 84:10, 84:13,
85:3, 85:10, 85:20,
85:23, 86:8, 86:15,
86:17, 86:21, 87:2,
87:6, 87:16, 87:21,
88:10, 88:19, 89:9,
89:19, 90:2, 90:6
GROCERIES [1] -
70:18
GROUND [1] - 51:24
GROUP [2] - 1:6, 3:4
GROUPS [1] - 4:7
GUESS [2] - 68:2
GUYS [1] - 73:4

H

HAC [1] - 87:20
HAD [24] - 13:23, 22:8,
22:11, 26:25, 29:1,
31:3, 31:13, 33:8,
33:19, 34:5, 36:7,
36:16, 37:10, 37:21,
40:4, 47:19, 51:25,
62:24, 81:21, 82:15,
88:16
HALT [1] - 59:8
HALTING [2] - 46:15,
59:14
HAND [1] - 34:24
HANDED [1] - 35:1
HANDS [1] - 25:22
HAPPEN [2] - 41:14,
41:15
HAPPENED [1] - 71:3
HAPPENING [2] -
59:6, 71:2
HAPPENS [1] - 13:16
HAPPY [1] - 13:25
HARD [2] - 55:19,
63:12
HARM [8] - 6:13,
45:19, 59:12, 68:23,
79:1, 79:12, 81:6,
82:21
HARMED [3] - 10:14,
17:20, 65:24
HARMFUL [1] - 46:15
HARMING [1] - 46:21
HAS [42] - 4:6, 5:8,
5:16, 8:8, 8:11, 14:5,
18:25, 19:24, 20:11,
22:18, 30:23, 31:13,
32:22, 34:22, 35:5,
36:17, 40:21, 56:18,
58:9, 58:16, 60:13,
61:3, 63:6, 63:7,
68:9, 68:22, 69:14,
69:22, 70:4, 70:5,
70:22, 70:24, 71:3,
75:3, 76:2, 78:9,
81:8, 82:17, 82:20,
84:8, 84:17, 84:21
HAVE [194] - 3:2, 3:5,
4:2, 5:11, 5:18, 5:21,
6:21, 8:7, 10:4, 10:5,
10:14, 11:2, 11:11,
12:5, 12:7, 12:21,
13:22, 15:7, 16:21,
17:13, 17:20, 20:4,
20:5, 20:7, 20:8,
21:6, 21:10, 21:12,
23:13, 26:16, 26:18,
26:19, 26:21, 26:24,
26:25, 27:7, 27:9,
27:22, 27:23, 30:4,
31:8, 31:10, 31:17,
32:5, 32:8, 32:21,
33:3, 33:4, 33:5,
33:15, 33:19, 34:5,
34:12, 34:13, 34:17,
34:20, 35:7, 35:11,
35:14, 36:11, 36:16,
36:18, 36:23, 36:24,
37:5, 37:18, 37:20,
38:6, 38:9, 38:14,
39:11, 40:17, 40:23,
41:17, 42:4, 42:15,
42:21, 44:3, 44:13,
44:23, 45:7, 46:19,
47:7, 47:10, 47:11,
47:19, 48:3, 48:20,
49:8, 49:12, 49:25,
50:7, 50:24, 51:19,
51:20, 52:1, 52:5,
52:8, 52:9, 53:24,
54:19, 54:24, 55:24,
57:6, 58:1, 58:7,
59:4, 59:8, 60:12,
60:14, 60:20, 62:7,
62:9, 62:14, 62:15,
62:21, 62:22, 63:5,
63:6, 63:12, 63:13,
63:22, 63:25, 64:4,
64:18, 65:19, 65:24,
66:5, 66:13, 66:18,
66:21, 67:1, 68:2,
68:7, 68:11, 68:20,
70:20, 70:22, 71:21,
72:9, 72:12, 72:16,
72:23, 72:24, 73:3,
73:5, 73:13, 73:22,
74:4, 74:8, 74:9,
74:21, 74:25, 75:7,
75:8, 75:10, 76:5,
76:8, 76:18, 76:19,
76:22, 77:7, 77:15,
78:2, 78:11, 78:13,
79:22, 80:17, 81:10,
81:12, 81:15, 81:18,
84:22, 85:8, 85:17,
87:20, 87:23, 88:6,
88:8, 88:10, 88:16,
88:24, 89:5, 90:2,
90:14
HAVING [14] - 15:22,
45:19, 49:10, 62:24,
65:4, 67:8, 68:4,
80:4, 80:7, 80:13,
81:2, 81:14, 83:12,
89:20
HE [28] - 5:19, 26:2,
26:4, 26:5, 29:1,
29:4, 29:8, 34:10,
35:15, 36:4, 37:9,
37:16, 38:17, 55:25,
69:16, 69:22, 70:4,
70:5, 70:6, 70:17,
70:21, 70:24, 73:14,
73:19, 77:9, 78:12
HEAD [1] - 66:13
HEAR [2] - 3:12, 59:17
HEARD [5] - 23:12,
32:11, 49:10, 65:17,
66:13
HEARING [21] - 1:13,
27:22, 27:24, 47:5,
51:2, 52:14, 62:22,
62:25, 69:15, 76:1,
77:23, 80:7, 80:13,
83:12, 83:23, 84:21,
85:9, 88:11, 89:11,
89:25, 90:3
HELD [3] - 80:7,
80:13, 89:11
HELP [3] - 28:13,
32:6, 69:4
HENCE [1] - 24:15
HER [1] - 68:14
HERE [42] - 3:21, 13:1,
14:22, 16:16, 18:23,
20:5, 27:1, 27:9,
27:10, 27:13, 27:14,
31:5, 32:8, 33:1,
33:3, 33:4, 33:18,
38:15, 39:18, 39:21,
46:4, 46:13, 48:25,
49:21, 49:23, 50:15,
55:21, 60:17, 66:7,
70:19, 71:18, 84:15,
86:13, 89:13, 89:15
HEREIN [1] - 84:4
HERSHEY [2] - 6:10,
6:25
HEY [1] - 37:23
HIDDEN [1] - 17:9
HIDING [1] - 56:25
HIGHLY [1] - 60:25
HIM [3] - 62:17, 86:25
HIMSELF [1] - 26:2
HIS [10] - 28:24, 29:7,
62:16, 68:14, 69:16,
69:20, 69:21, 70:5,
70:18, 70:22
HIT [1] - 12:16
HITTING [1] - 25:25
HOLD [1] - 47:22
HOLDING [1] - 4:7
HOLDINGS [2] - 1:6,
3:4
HOME [2] - 25:3,
69:16
HONOR [129] - 3:7,
3:9, 3:13, 4:9, 5:13,
5:14, 5:23, 5:24, 7:7,
7:8, 7:24, 9:6, 9:11,
9:15, 9:23, 10:23,
12:3, 12:11, 12:20,
13:11, 13:15, 13:19,
14:2, 14:9, 15:2,
15:8, 15:11, 15:18,
15:24, 16:3, 16:11,
16:23, 17:6, 18:12,
19:22, 21:7, 23:25,
25:7, 25:14, 25:19,
26:9, 26:15, 27:12,
28:1, 28:4, 28:23,
29:6, 29:10, 29:15,
31:6, 31:19, 31:23,
32:16, 32:20, 33:15,
33:23, 38:24, 39:8,
39:12, 39:19, 40:9,
41:6, 41:25, 42:18,
42:23, 45:13, 46:9,
46:12, 46:18, 46:25,

47:19, 47:22, 48:3,
49:15, 50:3, 50:7,
50:11, 51:5, 52:3,
53:9, 54:9, 54:17,
56:22, 59:19, 60:3,
60:12, 63:14, 63:15,
65:11, 66:4, 66:12,
66:20, 66:21, 67:14,
67:18, 67:20, 68:1,
68:2, 69:12, 72:1,
74:3, 74:18, 75:2,
75:14, 76:4, 76:10,
76:21, 77:4, 77:7,
77:14, 77:25, 79:7,
79:19, 80:21, 80:23,
81:17, 81:23, 82:3,
82:8, 85:20, 85:25,
86:8, 87:14, 87:24,
89:7, 89:18, 89:19,
90:25, 91:3
HONOR'S [4] - 12:15,
69:15, 75:18, 77:17
HONORABLE [1] -
1:11
HOOPS [1] - 29:13
HOPEFULLY [1] -
90:21
HOPING [1] - 68:6
HOURS [2] - 31:17,
48:22
HOW [19] - 18:10,
35:23, 37:19, 37:21,
38:3, 51:1, 51:21,
58:3, 61:8, 61:11,
61:12, 61:18, 62:10,
62:20, 62:22, 70:16,
70:17, 70:20
HOWEVER [4] - 6:3,
12:24, 14:9, 53:2
HUM [1] - 49:3
HYPOTHETICAL [2] -
20:1, 20:2

I

I'M [25] - 3:23, 11:15,
15:6, 16:15, 16:16,
19:2, 23:11, 32:9,
34:10, 38:14, 38:19,
44:6, 51:24, 62:8,
67:18, 70:8, 70:19,
79:7, 79:19, 81:19,
82:6, 82:9, 83:8,
83:17, 83:20
IE [1] - 13:11
IF [71] - 9:2, 11:1,
11:4, 11:6, 12:19,
13:8, 13:19, 13:23,
16:14, 18:2, 18:13,
19:4, 19:10, 19:19,
19:22, 20:7, 24:7,
24:14, 24:23, 30:12,
32:15, 32:17, 35:6,
35:8, 36:11, 38:2,
38:16, 39:15, 39:23,
41:17, 41:19, 41:23,
42:9, 48:18, 50:6,
52:20, 52:21, 53:2,
53:11, 53:23, 53:24,
54:7, 55:24, 57:6,
57:17, 57:18, 60:25,
63:24, 64:3, 65:6,
65:11, 66:25, 67:20,
68:21, 72:1, 72:10,
73:14, 74:20, 77:20,
78:22, 79:11, 81:16,
84:23, 86:3, 86:22,
87:19, 88:6, 89:8,
90:11
ILLEGAL [4] - 4:21,
5:6, 12:2, 13:14
IMMEDIATE [15] -
4:23, 9:17, 15:20,
44:16, 51:13, 55:22,
56:16, 60:5, 64:3,
78:25, 79:12, 80:18,
81:5, 82:21, 86:5
IMMEDIATELY [3] -
10:20, 69:1, 78:8
IMPACT [1] - 48:20
IMPASSE [1] - 21:9
IMPLIED [7] - 24:24,
30:12, 31:1, 32:18,
32:19, 34:9, 34:13
IMPORTANT [5] -
24:15, 36:21, 58:5,
59:14, 74:22
IMPORTANTLY [1] -
28:22
IMPOSE [2] - 62:23,
62:25
IMPOSED [2] - 18:14,
63:5
IMPOSING [1] - 66:1
IMPRESSION [19] -
25:2, 30:1, 33:7,
34:12, 34:16, 34:18,
39:1, 39:3, 39:6,
39:16, 39:17, 39:22,
39:25, 40:4, 40:5,
40:6, 40:10, 40:11
IMPROPER [1] - 21:16
IN [202] - 1:1, 3:21,
4:1, 5:17, 6:4, 6:8,
6:13, 6:18, 7:5, 7:6,
7:12, 7:19, 8:5, 8:7,
8:8, 8:14, 10:3, 10:4,
10:6, 10:9, 10:18,
11:19, 12:21, 13:2,
13:18, 14:5, 14:7,
14:10, 14:11, 14:16,
14:20, 15:1, 15:4,
15:21, 18:6, 18:14,
20:12, 21:4, 21:16,
22:4, 22:11, 22:13,
22:14, 22:20, 24:5,
24:18, 24:21, 25:15,
25:20, 25:21, 26:10,
26:19, 26:20, 27:7,
27:22, 27:24, 28:17,
28:25, 29:16, 29:20,
29:21, 29:25, 30:18,
30:25, 31:17, 32:5,
32:21, 33:5, 33:22,
34:5, 34:17, 34:19,
35:7, 36:2, 36:10,
37:10, 37:16, 38:2,
38:7, 38:9, 38:15,
38:25, 39:1, 39:24,
40:6, 40:9, 40:16,
41:19, 43:10, 43:22,
43:23, 44:7, 44:12,
45:12, 45:19, 45:22,
46:14, 46:16, 46:18,
46:19, 47:3, 47:4,
48:1, 48:18, 49:11,
49:20, 50:8, 51:5,
51:9, 51:10, 52:8,
52:11, 52:17, 52:24,
54:12, 54:25, 55:1,
56:7, 56:11, 56:12,
56:24, 57:5, 57:12,
57:13, 57:15, 57:19,
57:23, 58:5, 58:7,
58:12, 59:5, 60:15,
60:16, 60:17, 61:1,
61:2, 61:22, 62:3,
62:22, 62:25, 63:7,
65:6, 65:22, 66:7,
66:24, 67:16, 68:9,
68:10, 68:14, 68:17,
69:10, 72:2, 72:7,
72:11, 72:12, 72:19,
72:23, 73:5, 73:6,
73:10, 73:12, 74:19,
75:25, 76:7, 77:10,
78:13, 78:23, 79:14,
79:16, 79:17, 80:3,
80:7, 80:8, 80:12,
80:13, 80:18, 81:2,
81:4, 81:10, 83:9,
84:2, 85:19, 86:2,
86:18, 87:2, 87:10,
87:20, 88:7, 88:13,
88:17, 89:1, 89:3,
89:23, 90:3, 90:22,
91:11
INAPPROPRIATE [2] -
7:12, 71:1
INCIDENT [1] - 48:23
INCLUDE [9] - 20:3,
25:15, 29:25, 37:14,
54:25, 62:3, 84:15,
84:23, 86:14
INCLUDED [1] - 54:10
INCLUDES [1] - 78:6
INCOME [6] - 25:11,
25:22, 35:11, 35:12,
35:23, 42:19
INCORPORATING [1]
- 85:1
INDEPENDENT [1] -
49:2
INDEPENDENTLY [1]
- 59:9
INDICATED [2] -
16:14, 22:15
INDICATION [1] -
71:23
INDIVIDUAL [4] -
3:15, 5:19, 70:3,
70:5
INDIVIDUALS [3] -
59:11, 64:11, 65:24
INDULGENCE [1] -
45:10
INDUSTRY [1] - 37:25
INFORMATION [3] -
24:15, 40:17, 62:1
INFORMING [1] -
45:16
INJUNCTION [27] -
4:25, 8:17, 9:8,
12:22, 13:6, 14:25,
15:4, 16:13, 21:16,
22:9, 22:11, 23:3,
23:11, 27:23, 40:18,
45:23, 50:23, 51:2,
52:10, 52:14, 53:1,
61:16, 67:10, 72:16,
76:1, 77:23, 81:13
INJUNCTIONS [1] -
6:2
INJUNCTIVE [18] -
6:5, 6:20, 6:24, 8:3,
8:19, 8:21, 12:20,
16:16, 18:24, 22:19,
23:16, 41:20, 42:3,
42:9, 43:21, 49:8,
65:15, 81:12
INJURED [1] - 46:17
INSTAGRAM [3] -
60:9, 60:17, 60:19
INSTEAD [3] - 81:5,
83:11, 89:25
INSURING [2] - 41:2,
50:20
INTENSIVE [1] - 28:10
INTEREST [15] - 6:8,
6:17, 7:2, 45:25,
46:1, 46:5, 46:7,
46:8, 46:11, 46:14,
46:19, 49:10, 52:25
INTERESTING [1] -
78:14
INTERFERING [1] -
57:8
INTERIM [1] - 69:18
INTERMINGLED [1] -
47:16
INTERRUPTING [1] -
49:4
INTO [10] - 35:6,
38:20, 54:23, 55:20,
60:21, 61:15, 64:10,
74:20, 74:21, 75:11
INTRODUCTIONS [1]
- 3:5
INVESTIGATE [1] -
47:19
INVESTIGATION [1] -
64:6
INVESTIGATORS [1] -
30:4
INVITED [1] - 26:5
INVOLVES [2] - 24:8,
24:14
IRREPARABLE [6] -
6:13, 78:25, 79:12,
80:18, 81:5, 82:21
IS [380] - 3:3, 3:7, 3:10,
3:15, 3:21, 3:24,
3:25, 4:8, 4:13, 4:14,
4:18, 5:9, 5:17, 5:19,
6:4, 6:5, 6:9, 6:15,
6:22, 6:24, 7:1, 7:3,
7:5, 7:12, 7:13, 7:14,
7:19, 7:21, 8:4, 8:18,
9:2, 9:4, 9:10, 9:13,
9:18, 9:21, 9:22,
9:25, 10:3, 10:13,
10:16, 10:24, 11:4,
12:2, 12:11, 12:14,
12:19, 13:1, 13:5,
13:11, 13:19, 14:4,
14:20, 16:6, 16:8,
16:12, 17:4, 17:7,
17:18, 17:24, 18:4,
18:6, 18:13, 18:25,
19:5, 19:7, 19:17,
19:23, 20:9, 20:14,
20:15, 20:19, 20:20,
21:18, 21:20, 22:16,
22:17, 22:20, 22:21,
23:7, 23:10, 23:11,
23:18, 24:6, 24:7,
24:8, 24:14, 24:15,
24:21, 24:23, 24:24,
25:13, 25:22, 26:18,
26:21, 27:1, 27:6,
27:7, 27:9, 27:10,

27:13, 27:14, 27:15,
27:20, 28:13, 30:8,
30:11, 30:13, 30:25,
31:1, 31:4, 31:7,
31:9, 31:13, 32:18,
33:2, 33:7, 33:18,
33:24, 34:3, 34:4,
34:11, 34:16, 35:1,
35:5, 35:6, 35:8,
35:9, 35:11, 35:15,
35:21, 35:22, 35:23,
36:7, 36:19, 36:21,
37:11, 37:12, 37:13,
37:19, 38:25, 39:2,
39:9, 39:16, 39:17,
39:19, 39:20, 39:21,
39:22, 40:1, 40:3,
40:10, 40:12, 40:20,
40:25, 41:3, 41:13,
41:16, 41:19, 41:20,
41:23, 42:2, 42:14,
42:17, 42:18, 42:19,
42:24, 43:6, 43:7,
43:8, 43:16, 43:21,
44:9, 44:11, 44:24,
45:1, 45:7, 45:21,
45:25, 46:6, 46:14,
47:5, 47:7, 47:15,
47:16, 47:24, 48:12,
48:18, 48:25, 49:9,
49:21, 50:1, 50:4,
50:16, 50:24, 51:6,
51:11, 51:12, 51:16,
51:21, 51:24, 52:11,
52:21, 53:3, 53:7,
53:10, 53:12, 53:14,
53:19, 54:6, 54:12,
54:15, 55:7, 55:11,
55:21, 56:2, 56:3,
56:4, 56:9, 56:12,
56:23, 57:6, 57:7,
57:8, 57:14, 57:17,
57:18, 57:20, 57:21,
57:23, 57:24, 58:18,
58:20, 58:21, 58:22,
58:24, 59:2, 59:5,
59:7, 59:13, 59:21,
59:22, 59:23, 60:12,
60:17, 60:18, 60:22,
60:24, 60:25, 61:1,
61:5, 61:6, 61:7,
61:8, 61:10, 61:13,
61:23, 62:6, 62:11,
62:16, 62:19, 62:20,
63:4, 64:2, 64:3,
64:4, 64:19, 65:1,
65:5, 65:7, 65:10,
65:21, 65:22, 65:25,
66:6, 66:7, 67:5,
67:16, 68:3, 68:14,
68:17, 68:18, 68:21,

68:25, 69:2, 69:3,
69:4, 69:9, 69:10,
69:14, 69:23, 70:12,
70:16, 70:17, 70:21,
70:25, 71:6, 71:7,
71:13, 71:18, 72:13,
72:18, 72:25, 73:11,
74:7, 74:10, 75:6,
75:15, 75:21, 76:3,
78:3, 78:12, 78:17,
79:9, 79:11, 80:12,
80:23, 81:1, 81:8,
81:9, 81:19, 81:23,
82:12, 83:9, 83:14,
84:2, 84:20, 85:4,
85:10, 85:13, 85:15,
85:17, 85:18, 86:3,
86:5, 86:7, 86:10,
86:14, 86:24, 87:12,
87:17, 88:5, 88:23,
89:13, 89:24, 90:9,
91:1, 91:2, 91:10
ISN'T [2] - 10:10,
37:20
ISOLATION [1] - 40:9
ISSUANCE [1] - 53:4
ISSUE [16] - 3:22,
3:23, 5:1, 9:9, 14:25,
15:5, 16:15, 22:8,
23:8, 47:7, 50:23,
52:10, 60:22, 60:23,
60:24, 65:10
ISSUES [4] - 4:5, 28:8,
29:1, 49:11
IT [194] - 4:8, 4:11,
7:11, 7:21, 9:2, 9:21,
9:25, 10:13, 10:16,
12:6, 12:18, 13:5,
13:16, 13:19, 14:5,
14:16, 14:20, 14:24,
15:6, 15:7, 16:7,
16:22, 19:2, 19:19,
20:4, 20:16, 21:4,
21:6, 21:9, 21:17,
21:23, 22:2, 23:3,
23:7, 23:10, 24:7,
24:14, 24:22, 25:5,
28:15, 28:25, 30:16,
31:8, 31:10, 32:16,
32:19, 32:22, 32:23,
33:13, 33:22, 35:1,
35:21, 36:15, 36:17,
39:3, 39:6, 39:9,
39:14, 39:19, 40:1,
40:13, 40:25, 41:13,
41:23, 43:7, 46:14,
47:2, 47:15, 47:20,
47:23, 47:25, 48:2,
48:6, 48:23, 49:4,
49:13, 49:14, 49:21,

50:9, 50:12, 50:18,
51:8, 51:9, 51:10,
51:14, 51:19, 51:22,
52:17, 52:21, 53:10,
53:15, 53:16, 53:23,
53:24, 55:18, 56:25,
57:16, 59:1, 61:12,
61:23, 62:7, 62:9,
62:13, 62:17, 62:19,
62:20, 62:23, 63:4,
63:5, 65:21, 65:24,
65:25, 66:1, 66:11,
66:15, 66:24, 68:3,
68:8, 68:18, 68:23,
68:25, 69:2, 69:9,
70:15, 70:16, 71:24,
72:7, 72:8, 72:11,
72:13, 73:2, 73:14,
73:16, 73:20, 74:5,
74:8, 74:13, 74:22,
75:8, 75:10, 75:12,
75:20, 75:24, 76:18,
77:1, 77:20, 77:22,
78:2, 78:6, 78:12,
78:22, 78:24, 79:15,
80:12, 81:7, 81:24,
82:6, 82:15, 82:16,
82:17, 82:20, 83:5,
84:10, 84:20, 85:2,
85:3, 85:4, 85:13,
85:15, 85:16, 85:17,
85:18, 86:7, 86:10,
86:11, 87:1, 88:3,
88:10, 88:25, 89:13,
90:15, 90:17, 90:19,
90:20, 90:21
IT'S [73] - 4:4, 10:2,
13:10, 13:17, 14:4,
14:12, 14:14, 17:10,
19:19, 28:4, 32:9,
33:1, 33:7, 33:10,
34:11, 37:3, 37:25,
38:1, 39:9, 40:8,
43:10, 46:13, 46:15,
47:25, 48:11, 48:19,
48:24, 50:2, 51:5,
54:3, 54:13, 55:3,
55:4, 55:5, 55:7,
57:15, 58:5, 58:6,
58:12, 59:3, 59:20,
60:15, 60:18, 61:2,
61:8, 62:22, 65:7,
66:15, 67:11, 72:10,
72:12, 72:16, 72:22,
74:22, 78:14, 79:6,
83:10, 83:15, 85:12,
85:13, 85:14, 87:8,
88:9, 89:15, 89:16,
90:15, 90:16
ITEMIZATION [1] -
73:8

ITS [9] - 4:17, 5:17,
8:17, 27:7, 38:25,
40:22, 63:6, 82:8,
84:17
ITSELF [6] - 8:1,
19:14, 38:25, 39:23,
40:1, 43:11

J

JOB [3] - 57:14, 61:17,
69:3
JUDGE [1] - 89:4
JUDGEMENT [1] -
6:21
JUDGES [1] - 20:17
JUDGMENT [2] -
10:12, 22:3
JUMP [1] - 29:12
JUNCTURE [2] -
12:24, 30:18
JURISDICTION [12] -
3:25, 5:7, 5:8, 5:12,
5:16, 5:18, 5:22,
81:8, 84:8, 88:23,
88:24
JUST [72] - 4:2, 4:5,
6:13, 10:7, 10:15,
11:18, 12:13, 15:6,
15:22, 18:23, 20:11,
20:17, 26:22, 31:20,
31:25, 32:4, 33:3,
35:4, 35:13, 35:17,
35:20, 36:24, 41:9,
42:12, 43:17, 43:18,
43:25, 45:7, 48:24,
49:4, 49:13, 50:2,
51:14, 51:18, 52:1,
53:15, 54:17, 60:3,
60:6, 61:1, 61:7,
62:8, 62:17, 64:15,
65:19, 66:5, 66:21,
66:24, 67:8, 67:25,
69:13, 69:23, 70:19,
72:22, 74:3, 75:3,
75:6, 78:1, 78:11,
79:15, 81:6, 83:11,
84:11, 85:14, 86:6,
87:8, 88:12, 89:12,
90:4, 90:14, 90:16,
90:24
JUSTICE [1] - 21:13
JUSTIFYING [1] - 71:9

K

KEEP [8] - 10:16,
14:1, 60:22, 70:21,
70:22, 73:19, 83:19,
88:20

KELLEY [1] - 2:6
KIND [6] - 38:1, 51:4,
52:1, 53:25, 71:23,
76:14
KISS [1] - 12:17
KNEES [1] - 56:8
KNOW [36] - 11:19,
16:24, 17:24, 18:10,
20:5, 20:14, 26:15,
28:4, 30:7, 31:9,
35:18, 36:17, 38:15,
39:11, 39:12, 39:15,
39:16, 39:19, 40:11,
41:12, 47:20, 47:21,
51:21, 53:14, 57:21,
58:23, 61:11, 61:12,
68:5, 69:13, 70:20,
72:21, 75:2, 81:16,
90:4, 90:16
KNOWLEDGE [1] -
70:6

L

LABOR [1] - 28:10
LACK [3] - 28:19,
36:13, 36:15
LACKED [3] - 24:25,
30:13, 36:14
LACKING [1] - 28:13
LANGUAGE [17] -
14:5, 21:20, 22:13,
39:24, 75:7, 79:1,
80:11, 80:18, 81:12,
81:22, 85:1, 85:14,
86:14, 88:21, 88:25,
89:10, 89:13
LAST [2] - 42:24, 88:6
LASTLY [2] - 29:6,
29:15
LATE [1] - 33:22
LAUNCH [1] - 28:14
LAUREATE [2] - 33:1,
33:9
LAUREATES [3] -
32:23, 33:8, 33:11
LAW [5] - 21:19, 36:2,
40:7, 45:16, 66:16
LAWFULLY [2] -
57:15, 58:4
LAWFULNESS [2] -
22:25, 23:6
LEAST [6] - 23:8,
27:21, 31:14, 40:21,
60:21, 61:15
LEAVE [3] - 50:15,
62:13, 84:7
LEAVING [1] - 89:17
LEGITIMATE [11] -
46:19, 57:7, 57:17,

57:19, 58:16, 63:4,
68:21, 68:22, 68:24,
69:5, 90:10
LESS [2] - 31:17,
56:15
LET [8] - 18:16, 24:1,
47:14, 47:23, 50:14,
66:17, 79:13, 89:2
LET'S [13] - 3:12, 9:3,
10:7, 11:1, 14:20,
17:1, 26:11, 37:23,
56:19, 59:17, 73:2,
83:23, 88:12
LETS [1] - 88:5
LETTER [5] - 11:6,
11:12, 11:24, 12:1,
13:6
LIABILITY [1] - 60:6
LIBRARY [2] - 60:13,
61:13
LIKE [38] - 12:17,
21:9, 23:21, 23:22,
25:19, 32:22, 32:24,
33:8, 36:16, 39:9,
48:2, 48:3, 48:24,
49:3, 49:20, 50:17,
56:3, 58:5, 60:13,
60:15, 61:7, 62:2,
66:15, 66:24, 67:6,
68:4, 71:10, 71:20,
73:7, 74:22, 81:24,
82:8, 82:24, 83:21,
83:22, 85:16, 88:25
LIKELIHOOD [15] -
6:7, 13:3, 13:7,
18:20, 23:19, 23:20,
31:8, 33:13, 33:15,
39:15, 41:18, 44:21,
44:24, 52:23, 81:3
LIKELY [21] - 5:18,
24:9, 24:16, 24:22,
24:23, 25:5, 27:25,
28:2, 29:18, 30:8,
30:11, 30:23, 31:5,
36:1, 36:3, 39:2,
39:5, 40:1, 40:20,
42:11
LIMIT [1] - 44:14
LIMITATION [1] - 66:2
LIMITATIONS [1] -
55:17
LIMITED [15] - 4:24,
6:14, 7:19, 9:4, 15:9,
44:7, 46:3, 51:3,
51:4, 51:6, 54:1,
54:6, 55:3, 55:4,
55:6
LINE [6] - 20:21, 78:6,
78:7, 78:23, 79:9,
79:10

LINES [3] - 18:23,
78:9, 78:10
LISTENED [1] - 32:2
LITERALLY [1] -
48:22
LITIGATION [2] - 8:9,
46:17
LITTLE [2] - 25:20,
39:18
LIVE [1] - 73:15
LIVING [7] - 64:21,
70:21, 71:10, 72:3,
72:19, 73:8, 73:9
LLC [6] - 1:6, 3:4, 4:7,
7:13, 24:18, 48:1
LLP [1] - 2:6
LOATHE [3] - 56:14,
56:15, 56:16
LOCATE [2] - 57:23,
57:25
LOCATED [9] - 17:11,
17:14, 18:5, 19:7,
19:12, 20:13, 20:25,
41:2, 50:20
LOCATION [3] - 55:6,
64:4, 64:6
LOGINS [1] - 59:10
LONG [6] - 50:1, 51:1,
51:25, 53:20, 88:16,
89:14
LOOK [31] - 6:1, 9:2,
16:7, 19:6, 25:1,
26:21, 38:17, 39:23,
40:9, 40:12, 50:7,
50:14, 50:17, 51:16,
51:18, 52:12, 52:14,
52:15, 52:16, 52:20,
60:14, 68:12, 68:13,
69:3, 69:4, 69:8,
78:15, 79:11, 82:2,
89:12
LOOKED [1] - 89:10
LOOKING [12] - 21:13,
22:13, 31:2, 40:5,
40:18, 55:16, 60:15,
63:19, 65:15, 78:23,
79:10, 86:20
LOOKS [2] - 39:9,
81:24
LOSING [1] - 38:5
LOSS [1] - 37:12
LOT [5] - 20:15, 20:17,
32:10, 49:5, 56:20
LOTS [1] - 39:11
LOWER [1] - 22:3
LYNN [2] - 1:20, 91:15

M

MACHINE [1] - 49:3

MADE [12] - 25:8,
25:18, 29:12, 36:9,
36:12, 37:5, 37:10,
38:7, 38:9, 39:21
MAILED [1] - 77:7
MAILSTOP [1] - 1:17
MAIN [3] - 13:17,
61:10
MAINTAIN [5] - 10:24,
18:5, 19:9, 19:13,
65:25
MAINTAINED [2] -
17:24, 65:23
MAINTAINING [11] -
8:12, 17:25, 18:1,
19:8, 19:11, 19:20,
20:10, 20:12, 20:25,
41:1, 50:19
MAINTAINS [1] -
45:20
MAKE [25] - 23:8,
23:11, 34:23, 35:24,
45:16, 47:23, 49:19,
58:2, 58:19, 58:24,
65:9, 65:23, 66:15,
68:15, 70:15, 71:14,
75:7, 75:15, 75:20,
87:8, 88:5, 89:10,
89:13, 90:15, 91:1
MAKES [2] - 49:2,
87:17
MAKING [12] - 7:20,
15:15, 17:4, 37:8,
38:12, 42:18, 43:2,
48:15, 57:6, 58:10,
58:11, 62:5
MANAGEMENT [1] -
7:13
MANY [7] - 8:7, 28:25,
34:21, 37:8, 37:19,
38:3
MARKET [1] - 1:22
MARKETING [5] -
1:16, 29:17, 29:21,
48:9, 49:1
MATERIAL [12] - 24:8,
24:14, 24:20, 25:10,
26:14, 27:4, 27:18,
34:19, 35:9, 35:21,
35:22
MATERIALITY [7] -
24:14, 24:22, 25:4,
26:12, 26:13, 36:1,
36:2
MATERIALS [1] -
29:21
MATTER [8] - 3:3, 5:7,
5:12, 27:17, 80:8,
80:13, 81:8, 91:12
MATTERS [1] - 33:2

MAY [20] - 10:17,
13:24, 15:13, 15:14,
19:6, 22:18, 37:10,
38:8, 39:5, 47:18,
50:7, 52:4, 53:1,
56:5, 65:11, 65:24,
67:20, 68:23, 69:7
MAYBE [3] - 49:13,
53:16, 53:19
MCAULIFFE [26] -
1:15, 3:9, 3:10,
11:13, 23:24, 25:7,
25:14, 25:18, 28:1,
32:11, 41:25, 42:14,
42:17, 42:23, 43:4,
43:7, 43:13, 43:18,
44:2, 45:10, 45:15,
46:12, 49:25, 50:2,
50:6, 90:9
ME [46] - 3:15, 3:18,
7:23, 10:19, 12:6,
12:7, 12:9, 12:14,
17:14, 18:16, 20:23,
24:1, 28:25, 30:22,
35:11, 38:15, 41:5,
42:12, 46:4, 46:7,
46:10, 47:14, 47:23,
51:1, 53:18, 55:18,
55:24, 55:25, 56:19,
64:15, 65:9, 66:17,
67:1, 74:20, 74:22,
75:24, 76:19, 78:13,
79:13, 82:24, 83:22,
84:11
MEAN [3] - 19:25,
43:10, 83:10
MEANING [1] - 59:10
MEANS [4] - 64:20,
65:21, 72:11, 90:5
MEANT [2] - 39:21,
65:20
MEANTIME [1] - 77:10
MEASURE [1] - 60:6
MEDIA [2] - 60:12,
60:13
MEDICAL [2] - 6:10,
6:25
MEET [1] - 30:18
MEMORANDUM [2] -
80:6, 89:22
MEMORIALIZE [1] -
77:16
MENTIONED [3] -
44:12, 44:13, 55:10
MERITS [7] - 13:4,
13:8, 18:21, 23:19,
23:21, 44:22, 44:25
MESSAGE [6] - 24:24,
25:1, 27:2, 30:13,
30:14, 32:18

MESSAGED [1] - 27:5
MESSAGES [2] - 31:1,
34:9
MET [6] - 30:23, 31:5,
40:22, 41:17, 63:6,
81:16
MIGHT [4] - 13:9,
15:21, 54:25, 55:18
MILITARY [1] - 29:7
MILK [2] - 69:16,
71:20
MILLION [6] - 14:10,
26:3, 26:4, 34:23,
35:3, 73:15
MILLION-DOLLAR [2]
- 26:3, 26:4
MILLIONS [1] - 35:2
MIND [2] - 10:21, 50:6
MINE [1] - 82:14
MINGLED [1] - 70:24
MINUTES [4] - 74:19,
75:4, 75:9, 90:22
MIRROR [2] - 43:2,
43:6
MISINTERPRETED [1]
- 65:20
MISLEAD [25] - 24:9,
24:22, 24:23, 25:5,
27:25, 28:2, 29:18,
30:8, 30:11, 30:12,
30:24, 31:5, 31:8,
32:1, 32:16, 33:13,
33:16, 34:8, 36:1,
36:3, 39:2, 39:5,
39:15, 40:2, 40:20
MISLEADING [2] -
26:10, 29:18
**MISREPRESENTATI
ONS** [2] - 42:7, 42:18
MISREPS [1] - 43:2
**MISUNDERSTANDIN
G** [1] - 63:17
MISUNDERSTOOD
[1] - 63:24
MIXED [1] - 50:8
MODIFY [2] - 77:20,
84:14
MONETARY [17] -
7:17, 8:3, 8:10, 8:13,
8:18, 9:5, 9:10, 9:13,
9:18, 9:22, 9:25,
10:5, 11:22, 11:25,
21:22, 22:1, 23:3
MONEY [19] - 13:1,
13:6, 16:9, 17:4,
17:18, 20:11, 22:12,
35:11, 35:24, 37:8,
38:5, 38:6, 38:12,
64:21, 64:25, 65:6,
65:23, 65:24, 70:11

MONTH [3] - 35:2, 35:17, 73:15
MONTHS [1] - 31:14
MORE [13] - 14:20, 25:23, 26:16, 28:10, 31:25, 35:13, 35:22, 38:8, 40:19, 41:20, 53:7, 53:11, 87:17
MORNING [8] - 3:2, 3:13, 13:3, 31:19, 33:24, 37:7, 38:19, 65:16
MORTGAGE [1] - 70:17
MOST [4] - 28:22, 33:2, 34:22, 61:6
MOTION [18] - 10:12, 13:11, 14:12, 25:16, 26:18, 26:25, 27:7, 27:8, 31:15, 71:8, 71:25, 72:4, 72:9, 73:10, 73:14, 78:21, 80:5, 89:21
MOVE [7] - 21:10, 23:18, 27:25, 41:4, 45:8, 68:18, 80:15
MOVED [1] - 35:25
MR [103] - 3:9, 3:13, 3:16, 3:18, 4:9, 5:13, 5:23, 7:8, 11:13, 12:10, 12:15, 13:15, 13:25, 15:1, 15:8, 15:11, 15:17, 15:23, 16:2, 16:10, 16:23, 18:17, 18:19, 19:13, 19:16, 19:21, 21:2, 21:6, 23:24, 25:7, 25:14, 25:18, 26:15, 28:1, 31:6, 31:22, 32:8, 32:11, 32:12, 32:20, 33:22, 34:1, 37:9, 38:24, 40:8, 40:15, 41:25, 42:14, 42:17, 42:23, 43:4, 43:7, 43:13, 43:18, 44:2, 44:21, 45:10, 45:15, 46:9, 46:12, 46:25, 47:18, 48:12, 48:25, 49:25, 50:2, 50:6, 53:20, 59:19, 60:11, 65:11, 65:13, 66:3, 66:11, 66:20, 67:3, 67:5, 67:13, 67:18, 67:25, 69:12, 69:13, 69:22, 74:1, 74:17, 75:14, 76:3, 76:10, 76:14, 77:13, 81:17, 82:6, 85:25, 87:13, 87:24, 88:2, 88:14, 89:7, 89:18,

90:9, 90:12, 90:24, 91:3
MS [121] - 3:7, 5:14, 5:24, 7:7, 7:24, 8:15, 9:6, 9:11, 9:15, 9:19, 9:23, 10:2, 10:23, 11:8, 11:17, 12:3, 17:6, 17:15, 17:17, 17:22, 18:1, 18:12, 34:10, 36:4, 37:2, 38:11, 41:6, 41:9, 45:13, 49:15, 49:19, 50:11, 51:5, 51:10, 51:12, 52:3, 52:6, 53:9, 54:4, 54:9, 54:13, 54:16, 54:21, 55:2, 55:10, 55:13, 56:22, 59:20, 63:14, 64:9, 64:17, 64:24, 65:3, 67:20, 67:23, 70:2, 70:10, 71:5, 72:1, 72:6, 72:15, 72:22, 73:21, 73:24, 74:2, 74:11, 74:15, 75:2, 75:6, 76:13, 76:15, 76:21, 76:25, 77:4, 77:7, 77:25, 78:5, 78:19, 78:22, 79:2, 79:7, 79:19, 79:22, 80:2, 80:16, 80:20, 80:23, 81:7, 81:19, 82:3, 82:5, 82:12, 82:15, 82:22, 82:24, 83:3, 83:8, 83:17, 83:21, 84:5, 84:7, 84:10, 84:13, 85:3, 85:10, 85:20, 85:23, 86:8, 86:15, 86:17, 86:21, 87:2, 87:6, 87:16, 87:21, 88:10, 88:19, 89:9, 89:19, 90:2, 90:6
MUCH [10] - 14:20, 35:23, 37:21, 43:2, 53:23, 70:16, 70:17, 83:10, 91:4
MUSH [1] - 12:11
MUST [2] - 24:22, 65:19
MUTUAL [1] - 14:8
MY [28] - 3:7, 3:9, 3:18, 9:1, 10:2, 10:21, 12:10, 12:11, 12:12, 18:2, 29:23, 37:24, 40:25, 48:5, 50:16, 50:24, 53:9, 53:25, 61:10, 62:14, 62:23, 64:19, 67:18, 78:3, 80:23, 81:24, 87:21, 89:3

N

NAME [4] - 3:7, 3:9, 47:23, 89:3
NAMELY [2] - 22:23, 23:4
NAMES [1] - 59:11
NECESSARILY [1] - 68:11
NECESSARY [3] - 53:24, 56:24, 77:20
NEED [35] - 6:12, 11:25, 14:19, 18:3, 20:6, 24:2, 27:4, 31:11, 33:11, 34:17, 36:8, 37:4, 41:22, 41:23, 48:4, 49:23, 51:1, 51:21, 54:5, 55:21, 62:1, 62:9, 68:20, 69:11, 70:18, 71:9, 74:20, 75:6, 76:17, 77:5, 78:25, 81:1, 81:3, 81:13, 86:6
NEEDS [6] - 51:22, 62:10, 62:11, 65:7, 73:19, 85:19
NEGATE [1] - 34:6
NEGATIVE [1] - 14:6
NEGOTIATE [1] - 63:15
NEGOTIATED [2] - 74:9, 76:19
NEGOTIATING [1] - 61:6
NEGOTIATION [1] - 63:7
NEGOTIATIONS [1] - 77:12
NEITHER [2] - 19:7, 30:19
NELSON [3] - 62:16, 77:8
NET [11] - 34:11, 34:16, 34:18, 39:1, 39:3, 39:6, 39:16, 39:22, 40:10, 40:11
NEVER [6] - 28:23, 28:24, 28:25, 29:4, 29:5, 30:3
NEW [2] - 61:15, 82:11
NEXT [7] - 3:15, 30:7, 39:4, 71:22, 79:24, 82:2, 90:22
NHS [1] - 24:21
NIGHT [1] - 53:24
NINTH [1] - 24:19
NO [38] - 9:6, 9:11, 9:15, 9:19, 9:23, 12:19, 13:5, 13:6,

16:19, 16:21, 18:6, 29:8, 33:22, 35:5, 37:11, 37:12, 46:19, 51:17, 53:21, 53:24, 56:9, 59:22, 60:22, 61:3, 61:14, 63:14, 64:4, 64:23, 65:1, 65:6, 69:22, 77:25, 78:9, 78:10, 79:6, 82:4, 86:15
NOBEL [5] - 32:23, 33:1, 33:8, 33:9, 33:11
NOBODY [1] - 51:24
NON [1] - 14:16
NON-DISPARAGING [1] - 14:16
NONE [1] - 81:21
NORMAL [2] - 71:6, 81:12
NORMALLY [2] - 70:8, 88:25
NOT [152] - 3:22, 5:1, 6:12, 6:22, 7:16, 7:20, 8:5, 9:5, 9:9, 9:10, 9:13, 9:18, 10:14, 10:20, 13:17, 13:23, 14:10, 14:14, 14:24, 14:25, 15:6, 15:8, 15:14, 15:16, 15:21, 16:7, 16:15, 17:8, 17:9, 17:10, 19:1, 19:7, 20:3, 20:17, 21:10, 21:24, 22:16, 22:17, 23:3, 23:11, 23:13, 26:25, 28:17, 29:17, 29:24, 30:3, 30:5, 30:16, 30:17, 30:18, 30:23, 31:5, 31:25, 32:1, 32:13, 32:14, 32:15, 33:5, 33:19, 34:7, 34:10, 34:14, 36:7, 36:22, 36:23, 37:6, 37:7, 37:14, 38:6, 38:11, 38:14, 38:17, 38:19, 39:8, 39:12, 40:6, 41:3, 41:10, 41:14, 43:23, 44:6, 44:12, 45:4, 47:10, 47:18, 47:19, 48:16, 48:24, 49:4, 49:8, 49:12, 50:20, 50:23, 51:20, 52:1, 52:5, 52:21, 53:3, 53:16, 54:19, 55:5, 55:7, 56:4, 56:7, 56:11, 56:12, 57:8, 57:12, 57:15, 57:21, 57:23, 57:24, 58:3, 58:7,

58:13, 58:22, 58:24, 59:12, 59:15, 59:24, 60:1, 62:5, 62:8, 62:19, 62:25, 63:5, 64:10, 64:17, 65:18, 65:22, 66:2, 66:13, 66:14, 67:11, 68:10, 68:23, 69:6, 69:21, 72:18, 73:12, 78:3, 78:14, 80:19, 81:17, 82:14, 83:1, 83:6, 83:15, 90:7, 90:17
NOTED [1] - 77:15
NOTHING [10] - 16:19, 20:11, 29:25, 59:5, 59:8, 60:8, 60:9, 66:9
NOTICE [1] - 52:25
NOW [32] - 4:16, 5:25, 7:9, 10:8, 10:10, 10:18, 11:2, 12:4, 15:15, 15:22, 18:11, 20:18, 21:10, 37:10, 39:13, 40:17, 40:23, 44:5, 52:7, 55:20, 56:8, 58:18, 59:1, 61:2, 69:6, 70:19, 73:5, 84:20, 86:12, 89:1, 89:5, 89:17
NUMBER [13] - 1:3, 17:23, 26:24, 31:12, 31:13, 62:2, 62:15, 62:17, 67:1, 78:18, 79:14, 79:16, 79:23
NUMEROUS [1] - 28:8
NW [2] - 1:17, 2:7

O

O'CLOCK [2] - 33:20, 38:18
OBJECT [2] - 75:19, 77:18
OBJECTION [3] - 53:18, 53:19, 53:21
OBTAIN [6] - 7:17, 13:9, 21:15, 82:18, 84:17, 84:24
OBVIOUS [1] - 75:15
OBVIOUSLY [7] - 26:25, 67:15, 68:11, 73:14, 75:19, 77:18, 77:20
OCTOBER [7] - 50:25, 52:10, 53:18, 87:10, 88:11, 88:15, 88:18
OF [281] - 1:2, 1:16, 3:3, 3:14, 3:15, 4:1, 4:12, 4:13, 4:18, 5:3, 5:17, 5:20, 6:1, 6:5,

6:7, 6:21, 7:13, 8:6,
8:21, 9:21, 10:4,
10:14, 10:17, 10:21,
10:24, 11:21, 12:14,
12:17, 13:3, 13:7,
13:17, 13:18, 14:4,
14:10, 14:15, 14:23,
15:12, 15:15, 15:16,
15:22, 15:25, 17:3,
17:7, 17:11, 17:17,
17:19, 17:23, 18:7,
18:18, 18:20, 19:1,
19:5, 19:22, 20:3,
20:14, 20:15, 20:17,
20:20, 20:22, 20:23,
21:14, 21:19, 22:2,
22:7, 22:10, 22:14,
23:1, 23:5, 23:19,
23:20, 24:4, 25:2,
25:15, 25:23, 26:16,
26:17, 26:19, 26:22,
26:23, 26:24, 27:3,
27:5, 27:12, 27:14,
27:16, 27:17, 27:21,
28:19, 29:1, 29:7,
29:22, 30:2, 30:21,
30:23, 31:7, 31:11,
31:24, 32:4, 32:6,
32:10, 33:2, 33:11,
33:12, 33:13, 34:15,
34:16, 34:20, 34:22,
34:23, 35:2, 35:4,
35:10, 36:13, 36:15,
37:8, 37:12, 37:14,
37:15, 38:8, 38:15,
38:21, 39:5, 39:24,
40:10, 40:11, 40:16,
41:13, 41:18, 42:21,
43:2, 43:6, 44:8,
44:22, 44:24, 44:25,
45:8, 45:16, 46:17,
47:11, 47:13, 47:23,
47:25, 48:2, 48:13,
48:17, 48:23, 49:1,
49:5, 49:9, 49:11,
50:21, 50:24, 51:4,
51:6, 51:18, 52:1,
52:4, 52:12, 52:13,
52:17, 52:18, 52:23,
53:4, 53:21, 53:25,
54:2, 55:13, 55:22,
56:3, 56:7, 56:20,
56:23, 57:1, 57:4,
57:6, 57:7, 58:1,
58:9, 58:17, 58:22,
58:23, 58:25, 59:11,
59:22, 60:5, 60:6,
60:16, 60:20, 61:1,
61:2, 61:3, 61:7,
62:12, 63:25, 64:1,
64:11, 64:12, 64:13,
64:20, 66:5, 66:11,
66:15, 66:16, 67:7,
67:9, 67:11, 67:15,
69:2, 69:4, 69:16,
69:18, 70:11, 70:13,
70:14, 71:8, 71:9,
71:16, 71:19, 71:22,
71:23, 72:15, 73:9,
73:10, 75:14, 75:17,
75:20, 76:14, 76:23,
77:18, 77:21, 77:22,
78:7, 79:8, 80:3,
81:3, 81:22, 82:16,
82:19, 83:8, 83:11,
83:15, 83:17, 84:3,
84:18, 84:25, 85:5,
85:6, 85:9, 85:21,
86:9, 86:12, 86:18,
87:3, 87:10, 88:5,
88:11, 88:22, 89:19,
89:22, 89:25, 90:8,
90:10, 90:14, 90:21,
90:25, 91:11
OFF [9] - 12:13, 16:20,
17:4, 25:22, 49:22,
62:8, 75:13, 78:16,
87:9
OFFER [1] - 64:2
OFFERING [1] - 60:18
OFFICIAL [2] - 1:21,
91:14
OH [1] - 53:16
OKAY [75] - 3:17,
3:20, 5:25, 8:25,
13:19, 14:19, 16:4,
16:6, 17:1, 17:13,
17:21, 18:17, 19:18,
24:1, 25:17, 33:17,
43:1, 43:12, 46:23,
47:11, 49:7, 49:18,
50:4, 50:13, 51:16,
53:17, 53:22, 54:21,
54:22, 55:9, 59:17,
61:5, 63:9, 64:8,
65:9, 66:9, 66:19,
67:4, 67:24, 68:6,
69:11, 71:18, 73:23,
73:25, 74:15, 74:19,
75:5, 75:10, 76:9,
77:5, 77:24, 78:1,
78:24, 79:21, 79:22,
80:17, 80:22, 80:25,
82:20, 84:6, 84:13,
85:3, 85:22, 85:24,
86:1, 86:16, 87:1,
87:8, 87:15, 88:3,
88:22, 89:5, 89:13,
90:4, 90:13
ON [131] - 3:14, 3:21,
3:24, 4:3, 7:1, 10:8,
12:8, 12:16, 13:4,
13:7, 13:16, 13:22,
14:2, 14:9, 14:23,
15:7, 18:20, 21:10,
23:15, 23:19, 23:21,
24:1, 26:2, 26:6,
27:25, 29:2, 30:25,
31:1, 34:14, 35:15,
36:2, 36:3, 36:24,
36:25, 37:17, 38:5,
39:19, 40:17, 40:18,
40:21, 40:22, 41:4,
41:18, 43:25, 44:8,
44:21, 44:24, 45:8,
45:25, 47:22, 48:2,
48:7, 48:14, 48:17,
48:19, 48:20, 49:23,
50:19, 50:21, 50:24,
51:12, 51:13, 52:3,
52:10, 53:21, 53:23,
55:21, 55:25, 57:8,
57:18, 57:19, 59:18,
60:8, 60:9, 60:19,
60:23, 62:7, 62:8,
62:13, 62:24, 63:5,
64:6, 65:8, 66:2,
66:9, 66:20, 66:22,
67:14, 67:15, 68:1,
68:15, 69:7, 69:16,
70:25, 71:15, 71:22,
72:5, 73:18, 74:23,
75:3, 75:18, 75:23,
76:11, 77:11, 80:7,
80:13, 80:15, 82:8,
82:16, 83:12, 83:13,
83:24, 85:3, 85:10,
85:16, 85:18, 86:5,
86:10, 86:11, 86:12,
86:24, 87:2, 87:7,
88:6, 88:10, 89:25,
90:3, 90:16, 90:17
ONCE [3] - 50:15,
58:20, 73:11
ONE [41] - 3:15, 10:13,
13:16, 14:7, 16:16,
17:14, 17:16, 18:4,
20:9, 28:12, 28:24,
29:4, 29:8, 29:22,
30:12, 31:12, 31:16,
33:18, 34:3, 34:22,
37:9, 39:22, 40:4,
41:1, 42:5, 42:6,
42:17, 42:18, 42:24,
47:6, 55:19, 62:2,
64:2, 66:21, 69:14,
72:12, 72:13, 74:12,
78:19
ONE-TIME [1] - 72:13
ONES [3] - 7:3, 9:4,
46:2
ONGOING [2] - 58:24,
59:24
ONLINE [3] - 26:4,
32:5, 48:4
ONLY [22] - 6:22,
11:11, 11:23, 12:25,
13:6, 13:9, 16:14,
16:18, 33:20, 38:9,
40:25, 41:15, 42:22,
45:21, 54:6, 56:4,
65:10, 69:9, 72:12,
75:6
OPEN [1] - 67:8
OPENS [2] - 3:1,
63:11
OPERATING [3] -
19:3, 57:13, 57:15
OPERATION [4] -
57:7, 68:15, 68:22
OPERATIONS [3] -
48:19, 69:5, 90:11
OPINION [1] - 21:14
OPINIONS [1] - 20:15
OPP [1] - 39:11
OPPORTUNITIES [3] -
25:9, 42:8, 42:21
OPPORTUNITY [34] -
4:14, 5:4, 11:3,
11:24, 13:4, 14:14,
23:10, 23:17, 23:23,
30:6, 35:10, 36:11,
36:21, 36:23, 41:4,
41:15, 41:21, 41:22,
42:3, 42:15, 43:8,
43:17, 43:19, 43:22,
44:4, 44:8, 44:12,
45:2, 45:9, 63:23,
66:7, 66:10, 79:5,
83:6
OPPOSE [1] - 73:16
OPPOSITION [4] -
31:18, 32:22, 66:22,
73:14
OR [54] - 9:2, 10:21,
12:7, 16:16, 17:9,
20:9, 21:17, 21:18,
21:22, 22:1, 22:3,
23:22, 24:5, 24:7,
24:8, 24:16, 24:24,
26:6, 26:14, 28:20,
29:13, 30:12, 30:13,
31:1, 32:17, 33:9,
34:6, 34:9, 34:13,
34:14, 34:18, 38:17,
39:22, 43:16, 47:16,
47:18, 48:6, 53:1,
53:8, 53:11, 58:3,
64:13, 64:24, 65:7,
65:24, 68:14, 71:11,
72:9, 83:15, 86:19,
87:16, 88:11
ORDER [97] - 1:13,
4:17, 4:21, 4:22,
4:25, 9:8, 10:3, 10:4,
10:6, 14:24, 15:5,
19:10, 23:9, 26:20,
29:4, 33:6, 40:25,
44:15, 46:21, 47:2,
47:4, 49:12, 49:16,
50:1, 50:3, 50:5,
50:16, 50:22, 51:6,
51:9, 52:9, 52:11,
52:12, 52:17, 52:21,
53:1, 53:5, 54:6,
54:12, 57:2, 59:5,
59:7, 60:21, 61:7,
63:18, 63:23, 64:1,
64:10, 65:22, 66:13,
68:18, 69:15, 72:2,
72:7, 72:9, 72:11,
72:25, 73:3, 73:6,
73:12, 74:6, 74:10,
74:14, 75:3, 76:18,
76:23, 77:2, 77:3,
77:16, 77:19, 78:7,
78:20, 80:5, 81:15,
81:21, 82:2, 82:18,
83:14, 84:1, 84:18,
84:24, 85:6, 85:15,
85:21, 86:10, 86:18,
87:2, 87:4, 88:4,
88:17, 89:21, 90:14
ORDERED [9] - 10:12,
22:4, 54:7, 84:2,
85:5, 86:7, 88:4,
89:1
ORDERLY [3] - 57:1,
58:1, 58:17
ORDERS [4] - 20:16,
77:6
ORDINARY [1] - 65:18
ORIGINAL [1] - 78:7
OTHER [21] - 6:21,
8:4, 8:9, 8:23, 15:13,
16:24, 17:16, 19:1,
29:25, 34:4, 34:8,
36:11, 41:1, 41:14,
42:19, 44:10, 60:17,
61:7, 66:5, 86:11,
90:5
OTHERS [2] - 56:6,
69:7
OTHERWISE [6] -
41:5, 80:10, 88:9,
89:23, 89:24, 90:1
OUR [19] - 8:17, 12:21,
13:2, 27:11, 28:5,
30:4, 31:18, 32:21,
33:10, 35:7, 37:13,
37:23, 46:13, 48:18,

59:13, 63:23, 64:6,
66:21, 75:19
OURS [1] - 87:25
OUT [25] - 13:2, 14:23,
20:19, 25:24, 27:1,
30:21, 48:24, 53:21,
61:2, 61:18, 62:18,
65:23, 66:10, 68:7,
68:20, 69:10, 69:16,
79:3, 79:4, 79:13,
79:25, 80:20, 82:7,
82:10, 90:6
OUTLAY [1] - 65:8
OUTLET [1] - 60:14
OUTSET [2] - 47:1,
65:16
OUTSIDE [2] - 64:13,
71:19
OUTWEIGH [1] - 34:6
OVER [25] - 4:24,
5:16, 5:19, 9:13,
13:10, 14:11, 14:12,
15:16, 25:6, 27:9,
27:10, 34:25, 35:1,
35:12, 44:15, 54:2,
54:25, 55:13, 55:19,
58:15, 58:21, 64:12,
64:13, 81:8, 88:24
OVERALL [10] - 25:1,
27:6, 31:9, 33:7,
34:18, 34:19, 39:3,
39:22, 39:25, 40:6
OVERLAP [1] - 48:12
OWN [5] - 25:21,
29:15, 32:5, 37:16,
37:24
OWNER [1] - 5:20

P

P.I [1] - 8:9
P.M [1] - 89:3
PA [2] - 1:9, 1:22
PACES [1] - 20:18
PAGE [20] - 29:22,
38:25, 51:11, 51:12,
51:13, 54:15, 54:16,
66:19, 66:20, 67:1,
67:3, 67:17, 67:20,
67:22, 68:2, 85:3,
86:5, 86:9, 87:2,
88:6
PAID [2] - 10:14, 28:17
PAPER [3] - 12:21,
13:2, 14:12
PAPERS [2] - 31:14,
50:7
PARSE [1] - 39:23
PART [9] - 4:14, 5:4,
6:3, 33:13, 58:21,
58:23, 60:23, 86:21,
90:3
PARTE [1] - 85:8
PARTICIPATED [1] -
70:6
PARTICULAR [3] -
38:22, 55:6, 65:8
PARTICULARLY [1] -
56:9
PARTIES [7] - 3:23,
3:25, 5:11, 5:21, 7:5,
73:12, 84:22
PARTNERS [1] - 3:19
PARTNERSHIP [1] -
21:17
PARTY [2] - 49:5, 56:3
PASSIVE [1] - 35:12
PAUSE [1] - 45:12
PAY [8] - 16:20, 17:4,
22:4, 22:12, 35:17,
37:18, 37:21, 65:23
PAYMENT [2] - 58:17,
70:17
PENDENCY [2] -
17:19, 72:15
PENDING [1] - 47:5
PENN [2] - 6:9, 6:24
PENNSYLVANIA [3] -
1:2, 1:17, 5:18
PEOPLE [11] - 34:23,
40:4, 47:9, 47:20,
47:22, 48:1, 48:7,
48:14, 48:20, 56:10
PER [1] - 38:2
PERCENT [1] - 25:22
PERFECT [1] - 90:12
PERHAPS [1] - 56:15
PERIOD [1] - 53:3
PERMANENT [4] -
16:13, 21:16, 22:9,
22:11
PERMEATED [1] -
58:6
PERMITS [1] - 21:3
PERPETUATE [1] -
57:22
PERPETUATED [1] -
58:14
PERSON [1] - 21:17
PERSONAL [10] -
5:15, 5:21, 29:23,
64:11, 64:14, 69:21,
69:22, 70:5, 70:6,
90:7
PERSONALLY [2] -
57:5, 70:7
PERSUADED [1] -
65:7
PETER [1] - 4:7
PHILADELPHIA [2] -

1:9, 1:22
PINNING [1] - 65:22
PINPOINT [4] - 6:15,
7:14, 24:11, 24:19
PITCHES [1] - 58:11
PLACE [9] - 5:17,
11:19, 18:14, 22:25,
23:6, 58:12, 61:6,
72:12, 72:23
PLACED [1] - 29:5
PLAINTIFF [5] - 1:4,
1:19, 52:13, 80:9,
80:14
PLAINTIFFS [5] - 3:5,
12:7, 14:21, 41:5,
83:25
PLATFORM [3] - 48:3,
56:4, 69:7
PLAYED [1] - 61:11
PLEAD [1] - 8:9
PLEASE [1] - 29:23
PLENTY [1] - 20:14
PLUS [2] - 69:6, 88:8
POINT [15] - 4:4, 4:11,
8:13, 10:13, 16:19,
19:22, 21:4, 30:22,
32:21, 39:21, 44:1,
56:14, 59:20, 68:20,
89:22
POINTS [5] - 11:3,
12:16, 33:18, 66:5,
80:6
POOR [1] - 28:20
POP [1] - 60:19
POSITION [5] - 18:8,
21:10, 46:13, 59:13,
62:25
POSSIBILITY [9] -
10:4, 17:7, 17:17,
18:7, 19:5, 20:3,
20:20, 20:23, 50:21
POSSIBLE [3] - 20:8,
53:25, 73:10
POSTED [2] - 35:13,
35:15
POSTING [2] - 14:6,
58:9
POSTS [1] - 26:6
POSTURE [1] - 22:7
POTEET [1] - 3:19
POTENTIAL [3] -
25:11, 41:20, 46:16
POTENTIALLY [2] -
13:8, 49:5
PRACTICE [2] - 24:7,
34:15
PRACTICES [5] -
1:16, 4:21, 22:24,
23:5, 24:5
PRECAUTIONARY [1]

- 60:6
PREDICTABLE [1] -
25:23
PRELIMINARY [20] -
4:25, 6:2, 6:5, 8:17,
9:8, 14:25, 15:4,
27:23, 40:18, 45:23,
50:23, 51:1, 52:10,
52:14, 53:1, 61:16,
72:16, 76:1, 77:23,
78:6
PREMISED [2] -
50:19, 73:18
PREMISES [7] - 4:24,
9:17, 15:20, 44:17,
55:23, 56:17, 86:6
PREPARE [2] - 31:14,
85:6
PRESENT [1] - 18:6
PRESENTED [2] -
21:20, 83:25
PRESERVATION [1] -
50:21
PRESERVE [7] - 10:3,
17:7, 17:17, 18:13,
64:20, 75:19, 77:20
PRESERVED [1] -
18:14
PRESERVING [5] -
20:3, 20:19, 20:23,
46:16, 64:18
PRETRIAL [1] - 74:20
PRETTY [3] - 28:16,
43:2, 53:23
PREVENT [5] - 22:9,
46:21, 59:6, 86:18,
87:3
PREVENTS [1] - 56:24
PREVIOUS [1] - 57:5
PRIMARY [2] - 17:7,
17:11
PRINCIPLE [1] - 5:17
PRINCIPLES [1] -
12:18
PRINT [2] - 78:12,
90:20
PRINTER [1] - 78:13
PRIORITIZE [1] -
90:10
PRIVATE [4] - 7:3,
46:2, 46:8, 49:11
PRO [1] - 87:20
PROBABLY [6] - 4:10,
37:25, 38:1, 71:22,
73:6, 86:12
PROBLEM [6] - 16:21,
22:23, 23:4, 65:4,
65:5, 82:4
PROBLEMATIC [3] -
19:6, 19:7, 19:8

PROBLEMS [1] - 31:3
PROCEED [2] - 23:15,
62:20
PROCEEDING [1] -
45:12
PROCEEDINGS [2] -
1:24, 91:11
PROCESS [2] - 10:11,
68:17
PRODUCE [1] - 51:20
PRODUCED [1] - 1:25
PRODUCT [5] - 24:17,
35:9, 35:10, 48:5,
48:15
PRODUCTION [1] -
51:18
PRODUCTS [2] - 25:3,
26:8
PROFIT [2] - 29:8,
37:12
PROFITABLE [2] -
25:20, 34:25
PROFITS [1] - 42:19
PROGRAM [2] - 34:6,
59:2
PROGRAMS [1] -
25:10
PROHIBIT [2] - 7:20,
15:16
PROHIBITS [4] - 14:3,
14:6, 14:24, 24:5
PRONG [1] - 31:4
PROPER [1] - 52:22
PROPERLY [2] -
57:15, 58:4
PROPOSED [7] -
49:12, 49:16, 74:6,
75:3, 78:7, 79:13,
80:1
PROPOSITION [1] -
7:15
PROSPECTIVE [2] -
8:4, 22:16
PROTECT [1] - 71:1
PROTECTION [1] -
90:10
PROUD [1] - 32:4
PROVE [7] - 6:12,
18:3, 20:6, 29:13,
41:17
PROVIDE [14] - 25:19,
34:24, 36:8, 37:4,
40:19, 42:24, 43:9,
43:15, 43:24, 44:16,
56:19, 72:2, 73:8,
74:6
PROVIDED [8] - 30:3,
36:20, 37:6, 37:7,
53:2, 57:11, 66:14,
73:9

PROVIDING ^[1] - 51:6
PROVISION ^[10] -
 21:19, 22:15, 22:23,
 51:13, 54:13, 55:3,
 67:10, 68:1, 74:5
PROVISIONS ^[3] -
 63:5, 64:1, 77:22
PRUSINOWSKI ^[10] -
 3:16, 4:8, 4:9, 4:10,
 4:11, 26:1, 32:8,
 32:12, 48:25, 69:14
PRUSINOWSKI'S ^[1] -
 90:8
PUBLIC ^[14] - 6:8,
 6:17, 7:2, 45:25,
 46:1, 46:4, 46:7,
 46:10, 46:14, 46:22,
 49:10, 52:24
PURCHASE ^[1] -
 14:15
PURCHASES ^[1] -
 27:19
PURPORTED ^[1] -
 29:21
PURPOSE ^[8] - 10:24,
 13:10, 16:24, 17:3,
 17:7, 17:11, 19:22,
 35:10
PURPOSES ^[3] - 8:20,
 27:21, 60:21
PURSUANT ^[7] - 4:17,
 5:9, 6:4, 67:9, 82:19,
 84:18, 84:24
PUT ^[17] - 20:22, 24:1,
 33:12, 34:20, 55:25,
 71:7, 71:13, 72:6,
 72:11, 76:17, 77:11,
 79:14, 79:16, 81:1,
 81:4, 89:1, 89:2
PUTS ^[2] - 48:19,
 72:17
PUTTING ^[5] - 18:22,
 20:4, 20:18, 72:23,
 85:17

Q

QUESTION ^[10] - 5:8,
 9:1, 20:8, 21:20,
 23:1, 23:18, 41:7,
 43:21, 45:6, 47:14
QUESTIONS ^[2] - 6:5,
 12:16
QUICKLY ^[3] - 42:12,
 69:3, 70:16
QUITE ^[1] - 23:12
QUO ^[22] - 10:16,
 10:25, 17:24, 17:25,
 18:1, 18:6, 18:13,
 18:14, 19:8, 19:11,

19:14, 19:20, 20:10,
 20:12, 21:1, 41:1,
 45:20, 50:20, 64:19,
 64:20, 65:19, 65:25
QUOTE ^[3] - 39:1,
 39:4, 39:7
QUOTING ^[1] - 39:4

R

RAIDING ^[1] - 56:25
RAISED ^[1] - 66:6
RANGING ^[1] - 55:5
RATHER ^[5] - 3:22,
 6:18, 11:23, 16:17,
 23:4
RATIONAL ^[1] - 73:18
REACH ^[4] - 39:14,
 42:11, 44:3, 48:24
REACTION ^[1] - 60:5
READ ^[4] - 31:21,
 78:4, 83:20, 83:21
READILY ^[1] - 36:18
READING ^[3] - 15:7,
 15:15, 53:8
READY ^[4] - 34:25,
 52:1, 74:25, 76:19
REAL ^[2] - 60:24,
 68:14
REALIZED ^[1] - 29:11
REALLY ^[11] - 3:21,
 10:7, 13:23, 16:8,
 31:2, 34:7, 36:7,
 68:25, 84:16, 85:1
REASON ^[11] - 14:18,
 30:7, 31:12, 31:13,
 33:14, 41:3, 45:7,
 56:9, 65:22, 66:1,
 86:14
REASONABLE ^[4] -
 24:25, 30:14, 30:17,
 73:18
REASONABLY ^[3] -
 24:9, 28:3, 29:19
REASONS ^[3] - 15:13,
 20:9, 31:7
RECEIVE ^[3] - 7:3,
 46:1, 64:12
RECEIVED ^[3] - 27:2,
 29:4, 40:12
RECEIVER ^[44] - 4:23,
 8:23, 9:21, 16:1,
 44:18, 54:18, 55:11,
 55:14, 55:22, 56:15,
 56:20, 56:23, 57:12,
 57:19, 57:22, 57:24,
 57:25, 58:12, 58:15,
 58:18, 58:20, 59:21,
 60:23, 60:24, 60:25,
 61:9, 61:10, 61:25,

64:10, 64:12, 65:6,
 67:15, 68:4, 68:9,
 68:10, 68:12, 68:18,
 69:1, 69:10, 73:8,
 90:7, 90:9
RECEIVER'S ^[4] -
 57:14, 57:20, 61:17,
 69:3
RECEIVERSHIP ^[6] -
 8:16, 41:11, 58:24,
 59:13, 63:19, 63:21
RECEIVING ^[2] - 48:8,
 59:25
RECESS ^[2] - 63:10,
 76:7
RECOGNIZE ^[1] - 63:8
RECOMMENDATION
^[2] - 65:9, 68:16
RECOMMENDATION
S ^[1] - 58:2
RECORD ^[21] - 3:24,
 24:2, 31:20, 37:1,
 39:19, 49:22, 75:13,
 75:15, 75:20, 75:23,
 77:11, 78:16, 83:12,
 83:24, 87:9, 89:25,
 90:3, 90:18, 91:1,
 91:2, 91:11
RECORDED ^[1] - 1:24
RECORDS ^[13] - 4:24,
 9:13, 15:13, 15:16,
 36:10, 44:16, 51:7,
 51:19, 51:20, 54:2,
 57:25, 83:13, 86:6
RED ^[7] - 78:6, 78:7,
 78:9, 78:10, 78:23,
 79:8, 79:10
REDRESS ^[13] - 10:4,
 10:5, 10:6, 13:11,
 17:8, 17:18, 18:7,
 19:6, 19:23, 20:4,
 20:20, 20:23, 50:21
REES ^[2] - 2:2, 3:14
REFERENCE ^[7] -
 18:6, 38:14, 66:21,
 67:2, 84:15, 84:23,
 86:12
REFERENCED ^[1] -
 60:3
REFERENCES ^[1] -
 66:6
REFERRING ^[1] -
 34:11
REFERS ^[2] - 67:10,
 83:5
REFLECT ^[1] - 22:22
REFUND ^[1] - 29:14
REFUNDS ^[1] - 29:12
REGARDING ^[6] -
 24:16, 24:17, 35:7,

42:18, 63:20
REGARDLESS ^[3] -
 10:17, 14:23, 44:8
REGULARLY ^[1] -
 36:20
RELEASE ^[12] - 70:13,
 71:8, 71:9, 71:16,
 72:2, 72:14, 73:5,
 73:24, 74:6, 74:10,
 74:14, 75:8
RELEASED ^[2] -
 70:11, 73:1
RELEASES ^[1] - 72:8
RELIEF ^[40] - 6:5,
 6:20, 6:24, 7:17, 8:2,
 8:3, 8:4, 8:10, 8:13,
 8:18, 8:19, 8:21,
 8:24, 9:5, 9:10, 9:14,
 9:18, 9:22, 10:1,
 10:6, 11:23, 11:25,
 12:20, 16:17, 18:24,
 21:22, 22:1, 22:16,
 22:19, 23:3, 23:16,
 41:19, 41:20, 42:3,
 42:10, 49:8, 65:15,
 69:19
REMAINS ^[1] - 45:6
REMEDIES ^[2] -
 43:21, 43:25
REMEMBER ^[1] -
 45:21
REMOVE ^[1] - 87:6
REMOVING ^[1] - 87:1
REPATRIATION ^[2] -
 85:14, 86:3
REPEATEDLY ^[2] -
 25:24, 26:9
REPLACE ^[1] - 81:13
REPLACING ^[1] -
 80:10
REPORT ^[2] - 38:16,
 38:17
REPORTED ^[4] - 28:8,
 28:12, 28:19, 29:7
REPORTER ^[2] - 1:21,
 91:14
REPORTS ^[3] - 28:5,
 31:3, 31:4
REPRESENTATION
^[7] - 24:8, 24:14,
 24:23, 26:14, 30:11,
 39:2, 64:5
REPRESENTATIONS
^[2] - 25:2, 58:19
REPRESENTED ^[1] -
 64:4
REPRESENTING ^[2] -
 3:8, 3:10
REQUEST ^[16] - 7:20,
 11:9, 18:24, 21:25,

22:11, 22:19, 23:8,
 23:15, 29:12, 40:24,
 50:14, 55:8, 68:3,
 71:15, 72:17, 72:19
REQUESTED ^[4] -
 41:14, 44:3, 44:10,
 65:15
REQUESTING ^[2] -
 41:11, 54:11
REQUESTS ^[1] - 4:20
REQUIRE ^[3] - 12:23,
 44:16, 47:2
REQUIRED ^[2] - 30:5,
 42:25
REQUIREMENT ^[1] -
 43:9
REQUIRES ^[2] - 13:3,
 86:24
RESEND ^[1] - 81:23
RESERVATIONS ^[1] -
 90:24
RESERVE ^[1] - 77:19
RESERVING ^[1] - 19:5
RESIDENCE ^[3] -
 64:11, 64:14, 90:8
RESOLVED ^[2] - 6:6,
 65:5
RESPECT ^[17] - 5:15,
 18:23, 24:13, 27:3,
 38:13, 39:25, 40:24,
 43:1, 45:3, 45:4,
 47:7, 51:3, 56:5,
 63:18, 68:19, 77:11,
 77:21
RESPECTFULLY ^[1] -
 4:19
RESPOND ^[2] - 26:13,
 33:17
RESPONSE ^[1] -
 38:23
REST ^[1] - 53:21
RESTITUTION ^[6] -
 10:21, 20:21, 21:22,
 22:1, 22:5, 46:16
RESTRAINING ^[17] -
 1:13, 4:17, 23:9,
 46:21, 52:21, 53:1,
 53:4, 57:2, 77:19,
 80:5, 81:15, 82:18,
 83:14, 84:1, 84:18,
 84:24, 89:21
RESULT ^[1] - 79:12
RESULTS ^[2] - 29:24,
 30:3
RETAINED ^[1] - 88:24
RETENTION ^[1] -
 88:22
RETIREMENT ^[1] -
 29:8
RETROSPECTIVE ^[2]

- 22:16, 23:2
REVENUE [4] - 37:10, 37:11, 38:8, 38:9
REVIEW [3] - 4:15, 5:5, 63:23
REVIEWS [1] - 14:6
RIGHT [59] - 10:7, 10:8, 10:10, 10:18, 11:4, 11:12, 11:25, 12:2, 15:10, 15:15, 15:22, 17:14, 18:11, 18:12, 19:5, 20:13, 20:16, 23:19, 25:13, 31:9, 32:20, 33:25, 35:3, 37:1, 40:17, 42:23, 44:5, 44:20, 44:23, 44:25, 45:15, 48:3, 52:20, 54:2, 54:4, 55:1, 56:8, 62:1, 63:2, 65:3, 70:1, 70:9, 70:19, 71:4, 73:21, 74:9, 74:11, 80:2, 81:4, 81:18, 83:2, 83:3, 83:15, 84:16, 84:20, 87:8, 87:19, 89:6, 89:17
RIGHTS [3] - 77:19, 77:21, 90:25
RIGOROUS [1] - 14:20
RISK [1] - 75:14
RMR [2] - 1:20, 91:15
ROLE [3] - 57:20, 58:22, 67:15
ROOM [1] - 1:21
RULE [36] - 4:14, 5:4, 5:10, 11:24, 13:5, 18:10, 23:10, 23:17, 23:23, 30:6, 35:5, 36:11, 36:21, 36:23, 41:4, 41:15, 41:21, 41:22, 42:3, 42:15, 42:25, 43:8, 43:11, 43:17, 43:19, 43:22, 44:4, 45:2, 45:9, 52:20, 52:21, 53:15, 66:7, 66:10, 79:5, 83:6
RULES [1] - 53:7
RULING [1] - 75:18
RULINGS [1] - 77:17
RUN [2] - 7:16, 48:21
RUNNING [3] - 37:14, 48:15, 63:4
RYAN [3] - 1:15, 3:10, 3:19

S

SAID [21] - 19:1, 19:11, 27:15, 27:22, 30:15, 36:6, 36:16, 37:16, 40:23, 44:13, 44:18, 44:20, 47:1, 60:2, 62:19, 62:22, 68:5, 68:8, 69:13, 75:4, 82:8
SALE [1] - 29:8
SALES [6] - 28:23, 28:25, 29:22, 29:23, 48:15, 58:11
SALIENT [1] - 33:18
SAME [11] - 12:1, 13:13, 15:10, 15:19, 16:1, 16:2, 36:17, 37:3, 41:23, 54:3, 90:24
SATISFIED [7] - 18:15, 33:15, 56:11, 56:12, 62:12, 82:17, 84:17
SATISFIES [1] - 82:8
SATISFY [3] - 6:23, 18:20, 84:23
SAY [40] - 4:11, 13:13, 19:19, 20:20, 22:4, 26:20, 27:8, 27:17, 32:12, 32:24, 34:8, 35:16, 37:25, 38:3, 39:11, 39:24, 40:9, 42:9, 44:2, 44:19, 47:2, 51:9, 52:17, 53:7, 54:6, 59:8, 61:13, 64:18, 66:13, 66:25, 67:8, 69:7, 73:21, 75:25, 81:5, 81:6, 81:14, 83:12, 83:22, 84:3
SAYING [29] - 10:15, 14:7, 14:24, 16:6, 16:7, 16:15, 19:1, 19:25, 20:2, 20:4, 21:14, 22:20, 30:20, 31:3, 31:10, 32:13, 32:22, 32:24, 35:21, 36:5, 36:13, 37:11, 38:7, 40:3, 41:16, 72:18, 73:1, 73:7, 81:19
SAYS [25] - 21:4, 21:23, 22:22, 35:5, 37:9, 37:13, 37:23, 38:24, 40:7, 52:19, 52:20, 52:21, 53:16, 61:1, 68:18, 69:5, 73:5, 73:14, 82:16, 82:17, 84:20, 85:2, 85:4, 88:3
SCHEDULE [1] - 70:18
SCHEME [1] - 46:20
SCOPE [1] - 12:14
SCREENSHOT [1] - 26:23
SEAT [4] - 3:2, 21:12, 76:5, 76:8
SEATED [1] - 13:20
SECOND [5] - 31:4, 36:6, 50:7, 74:14, 77:3
SECONDARY [2] - 25:22, 76:22
SECRETED [1] - 17:10
SECTION [58] - 4:12, 4:15, 5:3, 6:18, 6:22, 7:16, 7:25, 8:1, 8:2, 8:4, 8:7, 8:9, 8:19, 11:5, 11:7, 11:8, 11:13, 11:21, 12:18, 12:23, 12:24, 13:1, 13:5, 13:7, 19:24, 21:14, 22:2, 23:2, 23:9, 23:16, 23:21, 23:22, 23:24, 24:4, 24:7, 30:19, 36:24, 37:3, 40:22, 41:13, 42:5, 42:10, 45:17, 45:18, 47:3, 51:10, 54:14, 62:3, 65:16, 67:3, 67:9, 67:23, 82:19, 84:18, 84:25, 85:11, 85:12
SECTIONS [2] - 4:18, 83:18
SEE [17] - 6:13, 13:5, 34:16, 37:19, 45:19, 49:13, 50:12, 66:17, 68:25, 75:8, 77:5, 78:8, 78:24, 79:5, 79:13, 82:12, 83:23
SEEING [1] - 53:15
SEEK [1] - 21:21
SEEKS [2] - 4:16, 6:3
SEEMED [1] - 64:7
SEEMINGLY [2] - 22:24, 23:5
SEEMS [6] - 12:6, 21:9, 55:17, 63:17, 70:15, 85:15
SEEN [3] - 26:19, 30:5, 36:25
SELF [1] - 25:9
SELF-STUDY [1] - 25:9
SELL [1] - 48:4
SELLING [5] - 25:9, 26:8, 42:7, 42:20, 48:22
SEND [2] - 82:1, 90:19
SENSE [2] - 70:15, 87:18
SENT [5] - 49:16, 78:6, 78:9, 79:8, 81:20
SENTENCE [1] - 39:4
SEPARATE [7] - 47:25, 59:9, 72:23, 72:25, 73:6, 74:7, 74:10
SEPARATION [1] - 47:17
SEPTEMBER [2] - 1:8, 88:7
SERVE [1] - 85:18
SERVES [1] - 17:22
SERVICE [14] - 52:12, 52:13, 61:19, 69:9, 85:5, 85:9, 85:23, 86:9, 86:10, 86:12, 86:17, 86:24, 87:3, 87:7
SERVICED [1] - 47:21
SERVICES [5] - 28:8, 29:12, 48:9, 48:16, 59:25
SERVICING [1] - 56:4
SERVING [2] - 56:5, 85:15
SET [3] - 30:20, 59:11, 84:4
SETTING [2] - 8:9, 22:18
SEVEN [2] - 25:25, 26:7
SEVEN-FIGURE [1] - 26:7
SEVERAL [1] - 31:14
SEVERANCE [1] - 58:14
SHALL [7] - 52:18, 53:5, 73:9, 85:6, 88:4, 88:18, 90:7
SHE [3] - 38:17, 59:21, 60:3
SHEARING [1] - 38:21
SHEETS [1] - 37:12
SHIPPING [1] - 29:1
SHOPIFY [1] - 48:2
SHORT [2] - 36:17, 86:12
SHOULD [32] - 5:1, 7:2, 9:9, 14:25, 15:5, 22:4, 34:6, 36:10, 36:18, 36:19, 44:19, 45:8, 46:1, 50:23, 52:10, 61:14, 61:25, 63:2, 63:5, 66:10, 68:10, 68:12, 68:13, 68:15, 68:17, 86:1, 86:11, 89:5, 90:13
SHOW [14] - 4:25, 9:8, 13:3, 14:24, 15:3, 15:6, 24:2, 35:15, 37:7, 44:15, 50:22, 52:9, 78:20
SHOWING [1] - 52:22
SHOWN [1] - 62:5
SHUT [2] - 57:16, 68:10
SIDE [2] - 47:13, 48:17
SIDES [1] - 48:13
SIGN [9] - 62:8, 72:12, 73:4, 74:12, 74:13, 74:22, 76:20, 77:2, 90:15
SIGNED [4] - 14:3, 14:5, 14:15, 90:15
SIMILAR [2] - 32:21, 33:1
SIMPLE [3] - 26:4, 28:4, 36:7
SIMPLY [2] - 23:12, 66:1
SINCE [3] - 8:7, 37:10, 38:8
SIT [1] - 13:24
SITUATION [3] - 20:5, 57:12, 62:24
SIX [1] - 31:17
SLEEP [1] - 13:23
SLOWNESS [1] - 79:20
SMALL [4] - 56:8, 62:11, 68:19, 69:14
SNIPPET [2] - 26:17
SNIPPETS [4] - 26:22, 31:11, 33:4, 39:17
SO [185] - 3:20, 3:23, 4:2, 4:6, 6:12, 8:2, 8:5, 8:17, 8:20, 9:2, 10:17, 11:1, 11:18, 11:19, 11:21, 12:8, 12:15, 13:5, 14:16, 16:4, 16:8, 16:13, 18:2, 18:13, 18:16, 19:9, 19:16, 19:18, 20:16, 21:4, 23:7, 23:15, 23:18, 25:4, 25:8, 26:6, 27:20, 27:25, 29:17, 30:25, 31:11, 32:15, 32:18, 33:14, 33:17, 34:1, 34:2, 34:3, 34:17, 35:4, 35:7, 35:20, 36:1, 36:6, 36:13, 36:15, 36:21, 37:5, 37:19, 38:2, 38:6, 38:10, 38:13, 38:19,

39:20, 40:9, 40:21,
41:12, 42:2, 42:4,
42:14, 43:1, 43:13,
43:20, 44:2, 44:9,
44:11, 44:18, 45:1,
45:6, 46:4, 48:1,
48:18, 49:3, 49:12,
50:14, 52:2, 52:8,
53:6, 53:11, 53:12,
53:18, 53:22, 54:1,
54:5, 54:22, 55:4,
55:5, 55:16, 55:25,
56:14, 56:18, 57:3,
57:8, 57:17, 58:5,
58:12, 58:14, 58:19,
59:3, 59:5, 59:7,
59:11, 59:13, 60:8,
60:11, 60:22, 61:5,
61:16, 62:13, 62:17,
63:7, 63:17, 63:19,
63:22, 65:3, 66:10,
66:20, 67:13, 67:19,
67:25, 68:6, 68:21,
68:23, 68:25, 69:18,
70:6, 70:15, 70:16,
70:20, 71:3, 71:6,
71:24, 72:24, 73:13,
74:3, 74:4, 74:13,
74:17, 76:17, 78:6,
78:8, 78:13, 78:17,
79:16, 80:12, 80:17,
80:24, 81:1, 81:4,
81:7, 81:13, 82:3,
82:5, 82:16, 83:8,
83:17, 84:2, 84:10,
84:20, 84:22, 85:7,
85:9, 86:1, 86:9,
86:22, 88:6, 88:7,
88:17, 89:1, 89:5,
89:15, 90:13, 90:19
SOCIAL [2] - 60:11,
60:13
SOFTWARE [17] -
47:10, 47:15, 47:24,
48:4, 48:8, 48:15,
48:21, 49:1, 49:3,
56:3, 57:10, 59:2,
59:23, 61:23, 61:24,
68:13, 69:7
SOLE [1] - 5:20
SOLICITATION [2] -
39:5, 39:6
SOME [26] - 4:11,
10:14, 15:13, 19:3,
27:17, 30:15, 34:12,
40:4, 47:20, 47:22,
48:7, 50:7, 51:20,
55:21, 56:2, 56:10,
63:25, 65:8, 66:11,
66:15, 69:18, 71:22,
76:23, 86:14
SOMEBODY [4] -
35:9, 35:23, 37:17,
57:23
SOMEONE [3] - 14:15,
49:18, 85:18
SOMEONE'S [1] -
60:19
SOMETHING [19] -
18:7, 18:9, 32:19,
33:8, 36:19, 43:16,
48:3, 49:23, 52:11,
54:18, 57:9, 61:25,
63:1, 66:25, 71:11,
73:7, 76:11, 78:11,
88:24
SOMEWHERE [1] -
38:1
SOON [3] - 73:10,
75:10, 90:15
SORRY [16] - 11:17,
21:7, 32:9, 42:23,
52:6, 63:24, 67:18,
74:1, 74:2, 79:7,
79:19, 80:24, 82:3,
82:5, 82:9, 85:10
SORT [6] - 12:17,
20:22, 26:17, 57:7,
69:4, 69:18
SOUND [3] - 26:22,
66:15, 71:17
SOUNDS [2] - 66:24,
67:6
SOURCE [1] - 25:23
SPEAK [1] - 59:21
SPECIALISTS [1] -
49:1
SPECIFIC [3] - 22:23,
23:4, 43:10
SPECIFICALLY [7] -
5:2, 18:3, 19:11,
19:19, 22:8, 50:19,
51:8
SPEEDBUMP [1] -
48:19
SPELL [1] - 13:2
SPEND [3] - 29:1,
64:21, 64:25
SPENDING [1] - 29:7
SPIT [1] - 70:19
SPOTIFY [1] - 56:3
ST [1] - 2:3
STAGE [2] - 8:18,
11:10
STAND [3] - 13:21,
13:25, 55:25
STANDARD [10] - 6:4,
6:18, 6:19, 6:22, 7:6,
34:10, 80:19, 81:4,
83:2
STANDARDS [2] -
6:24, 81:14
STANDING [1] - 40:1
STANDS [2] - 74:5,
74:8
START [7] - 9:4,
12:13, 26:7, 26:8,
26:11, 35:3, 56:19
STARTING [2] - 26:2,
89:8
STARTS [1] - 82:15
STATE [4] - 6:9, 6:24,
29:22, 40:25
STATED [5] - 12:6,
18:4, 28:24, 29:3,
29:23
STATEMENT [6] -
39:23, 39:24, 39:25,
40:1, 43:10, 43:24
STATEMENTS [10] -
29:16, 29:25, 30:19,
30:20, 34:4, 34:13,
34:14, 38:18, 56:10
STATES [4] - 1:1,
79:17, 89:4, 89:20
STATING [1] - 75:15
STATUS [22] - 10:16,
10:25, 17:24, 17:25,
18:1, 18:5, 18:13,
18:14, 19:8, 19:11,
19:14, 19:20, 20:10,
20:12, 21:1, 41:1,
45:20, 50:19, 64:19,
64:20, 65:19, 65:25
STATUTE [3] - 5:10,
14:3, 24:5
STATUTORY [1] -
21:20
STAY [3] - 13:19,
74:24, 89:13
STENOTYPE [1] -
1:24
STENOTYPE-
COMPUTER [1] -
1:24
STEP [1] - 49:9
STEPHEN [2] - 2:6,
3:14
STEPS [1] - 58:19
STILL [7] - 19:9,
27:23, 35:15, 45:6,
49:8, 79:6, 85:9
STIPULATED [1] -
12:22
STOP [2] - 10:15,
57:13
STOPPED [2] - 60:20
STOPPING [2] -
22:24, 23:5
STORAGE [1] - 86:19
STORE [3] - 28:24,
29:4, 48:4
STOREFUNNELS [1] -
57:10
STOREFUNNELS.
NET [7] - 47:24, 48:2,
48:7, 48:14, 49:3,
57:4, 59:2
STORES [12] - 25:20,
25:21, 28:21, 28:23,
37:15, 38:5, 48:15,
59:3, 59:9, 59:11,
59:12, 60:14
STORIES [2] - 32:7,
34:5
STOVE [1] - 61:23
STRATEGIES [1] -
28:9
STRATEGY [1] - 26:5
STREAM [1] - 25:22
STREET [2] - 1:22, 2:7
STRUCTURE [1] -
22:14
STUDENT [1] - 32:25
STUDENTS [1] - 28:14
STUDY [1] - 25:9
STUFF [6] - 19:1,
28:16, 39:11, 60:25,
67:7, 83:15
SUB [1] - 66:22
SUBJECT [4] - 5:7,
5:11, 6:2, 81:8
SUBMIT [1] - 58:8
SUBMITTED [1] -
32:13
SUBSTANTIATION [7]
- 30:4, 30:5, 36:12,
36:13, 36:14, 36:16,
37:4
SUBSTANTIATIONS
[1] - 36:8
SUCCEED [1] - 32:4
SUCCEEDED [1] -
32:3
SUCCESS [14] - 6:7,
13:4, 13:7, 18:20,
23:19, 23:21, 32:7,
34:4, 34:5, 41:18,
44:22, 44:24, 52:24,
81:3
SUCCESSFULLY [2] -
8:8, 47:9
SUCH [7] - 6:8, 21:22,
22:1, 23:10, 52:24,
53:3, 88:21
SUGGESTS [4] -
20:16, 32:18, 53:6,
53:15
SUIT [1] - 4:7
SUITE [2] - 2:3, 2:7
SUMMARY [2] - 10:12,
22:3
SUPPORT [4] - 28:13,
80:7, 80:12, 89:23
SUPPOSE [3] - 11:5,
45:6, 56:9
SUPPOSED [2] -
25:21, 79:2
SUPREME [1] - 8:5
SURE [26] - 17:4, 30:6,
34:7, 34:10, 38:19,
39:8, 40:6, 41:3,
45:16, 47:23, 57:6,
58:24, 62:5, 65:23,
70:9, 71:3, 75:7,
75:15, 75:20, 81:17,
87:8, 88:5, 89:10,
89:13, 90:15, 91:1
SURROUNDING [1] -
40:13
SUSPECT [1] - 34:11
SWEPT [1] - 61:2
SYSTEM [4] - 24:21,
28:13, 30:22, 59:10

T

TACTICS [1] - 28:10
TAILORED [1] - 62:10
TAKE [17] - 26:22,
38:19, 47:3, 50:6,
52:12, 52:13, 52:16,
58:20, 61:6, 61:12,
67:7, 68:12, 79:13,
79:25, 82:7, 89:12,
90:6
TAKEAWAY [1] - 27:6
TAKEN [5] - 35:6,
63:10, 66:10, 79:3,
79:4
TAKES [2] - 58:15,
58:20
TAKING [4] - 22:24,
23:5, 62:4, 80:20
TALK [6] - 33:19,
51:19, 51:21, 54:24,
70:16, 86:25
TALKED [5] - 20:8,
44:7, 47:10, 65:16,
90:25
TALKING [14] - 10:10,
11:15, 11:19, 16:5,
18:25, 20:15, 36:22,
39:1, 39:12, 41:9,
45:1, 47:11, 51:14,
61:13
TALKS [2] - 52:11,
86:10
TAXONOMY [1] -
11:19

TEAM [1] - 49:1
TECHNICAL [1] -
 60:25
TELEPHONE [1] -
 62:17
TELL [25] - 7:23,
 10:19, 12:9, 12:14,
 20:23, 41:5, 42:12,
 44:5, 46:4, 46:7,
 46:10, 48:5, 50:15,
 50:16, 51:1, 56:1,
 58:21, 61:20, 61:21,
 64:15, 75:23, 75:24,
 79:15, 86:25, 88:23
TEMPLATE [1] - 26:7
TEMPORARILY [1] -
 10:25
TEMPORARY [27] -
 1:13, 4:16, 4:22,
 8:21, 8:22, 8:23,
 9:21, 11:9, 16:1,
 23:9, 44:18, 46:20,
 52:20, 52:25, 53:4,
 55:22, 56:15, 57:2,
 77:18, 80:5, 81:15,
 82:18, 83:13, 84:1,
 84:18, 84:24, 89:21
TEN [1] - 88:8
TENS [1] - 35:2
TERMS [4] - 13:18,
 15:21, 60:16, 84:3
TEST [4] - 6:3, 27:7,
 27:8, 29:4
TESTIMONIALS [1] -
 26:10
TESTIMONY [1] -
 27:15
THAN [9] - 3:22, 6:23,
 7:3, 28:10, 31:17,
 35:23, 38:8, 41:21,
 46:2
THANK [9] - 31:6,
 46:25, 59:19, 63:9,
 66:3, 67:14, 77:13,
 91:3, 91:4
THAT [527] - 3:21,
 3:22, 4:2, 4:3, 4:4,
 4:20, 4:22, 5:11,
 5:21, 6:9, 6:13, 6:22,
 6:24, 7:3, 7:5, 7:12,
 7:13, 7:15, 7:16,
 7:18, 7:19, 7:20,
 7:21, 8:10, 8:12, 9:4,
 9:10, 9:13, 9:17,
 9:22, 9:25, 10:2,
 10:15, 12:5, 12:6,
 12:7, 12:8, 12:22,
 13:3, 13:22, 14:3,
 14:4, 14:5, 14:9,
 14:15, 14:17, 14:18,
 14:24, 15:4, 15:5,
 15:7, 15:14, 15:21,
 16:6, 16:8, 16:14,
 16:20, 17:2, 17:8,
 17:9, 17:10, 17:14,
 17:18, 17:19, 17:23,
 18:4, 18:7, 18:8,
 18:9, 18:14, 18:15,
 18:17, 18:22, 19:2,
 19:3, 19:4, 19:6,
 19:9, 19:10, 19:12,
 19:16, 19:18, 19:22,
 19:24, 20:2, 20:10,
 20:11, 20:13, 20:15,
 20:16, 20:22, 21:3,
 21:5, 21:9, 21:17,
 21:19, 21:23, 22:11,
 22:15, 22:16, 22:20,
 22:22, 23:4, 23:5,
 23:7, 23:14, 24:3,
 24:8, 24:15, 24:17,
 24:20, 24:21, 24:25,
 25:8, 25:11, 25:13,
 25:22, 25:24, 26:2,
 26:3, 26:17, 27:2,
 27:3, 27:7, 27:14,
 27:15, 27:17, 27:20,
 28:9, 28:12, 28:15,
 28:23, 28:24, 29:3,
 29:4, 29:7, 29:13,
 29:16, 29:22, 29:25,
 30:2, 30:8, 30:18,
 30:20, 30:23, 31:3,
 31:4, 31:25, 32:1,
 32:9, 32:10, 32:13,
 32:18, 32:19, 32:21,
 32:23, 32:24, 32:25,
 33:3, 33:5, 33:12,
 33:14, 33:18, 34:4,
 34:6, 34:7, 34:11,
 34:12, 34:13, 34:23,
 34:25, 35:1, 35:5,
 35:7, 35:8, 35:9,
 35:15, 35:20, 35:21,
 35:22, 36:6, 36:9,
 36:12, 36:14, 36:19,
 37:3, 37:4, 37:5,
 37:6, 37:7, 37:14,
 37:16, 37:20, 38:4,
 38:7, 38:18, 38:19,
 38:21, 39:8, 39:13,
 39:20, 39:24, 39:25,
 40:1, 40:5, 40:12,
 40:17, 40:20, 40:24,
 40:25, 41:2, 41:3,
 41:12, 41:13, 41:14,
 41:16, 41:24, 42:1,
 42:9, 42:10, 42:21,
 43:6, 43:9, 43:13,
 43:16, 43:18, 44:2,
 44:3, 44:6, 44:7,
 44:9, 44:10, 44:12,
 44:13, 44:19, 44:24,
 45:3, 45:5, 45:16,
 45:17, 45:19, 46:6,
 46:13, 47:2, 47:8,
 47:9, 47:15, 48:1,
 48:5, 48:7, 48:10,
 48:14, 48:15, 48:17,
 48:18, 48:20, 48:25,
 49:2, 49:4, 49:7,
 49:9, 49:19, 49:20,
 50:20, 50:23, 52:1,
 52:2, 52:8, 52:12,
 52:14, 52:15, 52:16,
 52:19, 52:22, 53:2,
 53:6, 53:7, 53:10,
 53:16, 53:19, 53:23,
 54:2, 54:12, 55:3,
 55:7, 55:17, 55:19,
 55:21, 56:1, 56:10,
 56:11, 56:12, 57:4,
 57:6, 57:7, 57:8,
 57:9, 57:10, 57:12,
 57:18, 57:20, 57:21,
 57:22, 57:23, 58:6,
 58:7, 58:8, 58:13,
 58:14, 58:15, 58:16,
 58:21, 58:22, 58:24,
 59:2, 59:3, 59:5,
 59:6, 59:8, 59:10,
 59:12, 59:13, 59:15,
 59:18, 59:20, 59:22,
 59:23, 59:24, 59:25,
 60:3, 60:5, 60:11,
 60:13, 60:15, 60:17,
 60:19, 60:20, 60:21,
 60:23, 61:12, 61:16,
 61:19, 61:24, 62:1,
 62:5, 62:7, 62:9,
 62:10, 62:21, 62:22,
 62:23, 63:1, 63:2,
 63:3, 63:8, 64:2,
 64:3, 64:7, 64:10,
 64:11, 64:15, 64:18,
 64:20, 65:4, 65:5,
 65:7, 65:9, 65:10,
 65:15, 65:20, 65:21,
 65:23, 66:6, 66:8,
 66:10, 66:12, 66:21,
 67:10, 68:1, 68:3,
 68:5, 68:17, 68:19,
 68:20, 68:21, 68:22,
 68:25, 69:7, 69:9,
 69:13, 70:11, 70:23,
 70:24, 71:1, 71:12,
 71:13, 71:15, 71:17,
 71:21, 72:3, 72:5,
 72:7, 72:11, 72:13,
 72:25, 73:1, 73:9,
 73:11, 73:13, 73:17,
 73:22, 74:6, 74:9,
 74:21, 75:11, 75:20,
 75:25, 76:2, 76:3,
 76:19, 76:23, 77:2,
 77:11, 77:17, 78:8,
 78:9, 78:23, 79:2,
 79:11, 79:18, 80:3,
 80:10, 80:14, 80:17,
 80:20, 80:23, 80:24,
 81:4, 81:9, 81:13,
 81:14, 81:18, 81:20,
 81:21, 81:22, 81:23,
 82:1, 82:17, 82:25,
 83:2, 83:3, 83:13,
 83:19, 84:1, 84:15,
 84:17, 84:21, 85:1,
 85:5, 85:7, 85:8,
 85:24, 86:2, 86:7,
 86:13, 86:14, 86:23,
 87:6, 87:8, 87:11,
 88:5, 88:20, 89:6,
 89:10, 89:12, 89:23,
 90:1, 90:6, 90:16,
 90:25, 91:10
THAT'S [62] - 6:10,
 11:15, 12:3, 14:8,
 14:10, 15:10, 15:17,
 15:23, 16:10, 17:6,
 17:11, 17:14, 17:15,
 20:11, 20:12, 24:10,
 24:11, 24:19, 25:2,
 27:8, 30:7, 31:12,
 35:3, 36:13, 36:20,
 37:21, 38:8, 39:7,
 40:5, 40:6, 40:14,
 42:22, 43:2, 43:10,
 46:2, 46:20, 54:10,
 55:10, 58:23, 61:24,
 62:2, 65:3, 69:9,
 69:25, 71:11, 75:22,
 76:25, 78:11, 80:25,
 81:19, 82:11, 82:23,
 83:1, 84:15, 84:16,
 87:13, 87:15, 87:16,
 87:21, 88:7, 88:14
THE [1167] - 1:1, 1:2,
 1:11, 1:19, 2:4, 2:8,
 3:2, 3:3, 3:8, 3:10,
 3:12, 3:14, 3:15,
 3:17, 3:20, 3:21,
 3:22, 3:23, 3:24,
 3:25, 4:1, 4:6, 4:10,
 4:13, 4:14, 4:16,
 4:18, 4:20, 4:21, 5:2,
 5:3, 5:7, 5:9, 5:11,
 5:15, 5:16, 5:18,
 5:19, 5:21, 5:25, 6:1,
 6:2, 6:3, 6:4, 6:5,
 6:6, 6:8, 6:12, 6:13,
 6:17, 6:19, 6:20,
 6:22, 6:23, 7:1, 7:2,
 7:4, 7:5, 7:9, 7:11,
 7:15, 7:16, 7:18,
 7:20, 7:22, 8:1, 8:5,
 8:6, 8:8, 8:12, 8:14,
 8:17, 8:20, 8:25, 9:4,
 9:7, 9:12, 9:16, 9:20,
 9:21, 9:24, 10:3,
 10:7, 10:9, 10:12,
 10:16, 10:18, 10:24,
 11:1, 11:11, 11:13,
 11:15, 11:18, 11:19,
 11:21, 11:24, 12:1,
 12:2, 12:4, 12:13,
 12:14, 12:16, 12:17,
 12:21, 12:23, 12:24,
 12:25, 13:4, 13:5,
 13:7, 13:8, 13:9,
 13:10, 13:13, 13:14,
 13:16, 13:17, 13:18,
 13:21, 13:22, 14:1,
 14:2, 14:6, 14:7,
 14:10, 14:11, 14:12,
 14:13, 14:14, 14:15,
 14:17, 14:19, 14:21,
 14:23, 15:1, 15:3,
 15:5, 15:9, 15:10,
 15:12, 15:16, 15:19,
 15:22, 15:25, 16:4,
 16:5, 16:6, 16:9,
 16:12, 16:14, 16:18,
 16:20, 16:24, 16:25,
 17:1, 17:3, 17:6,
 17:7, 17:11, 17:13,
 17:16, 17:17, 17:19,
 17:21, 17:23, 17:25,
 18:1, 18:2, 18:4,
 18:5, 18:6, 18:12,
 18:13, 18:14, 18:15,
 18:16, 18:20, 18:21,
 18:22, 18:23, 18:24,
 19:1, 19:2, 19:4,
 19:5, 19:6, 19:8,
 19:10, 19:12, 19:13,
 19:14, 19:15, 19:18,
 19:20, 19:22, 19:23,
 19:25, 20:1, 20:2,
 20:3, 20:9, 20:10,
 20:12, 20:13, 20:19,
 20:20, 20:23, 20:24,
 20:25, 21:1, 21:4,
 21:8, 21:13, 21:14,
 21:15, 21:19, 21:21,
 22:2, 22:3, 22:4,
 22:6, 22:7, 22:8,
 22:9, 22:10, 22:12,
 22:13, 22:14, 22:15,
 22:17, 22:18, 22:20,
 22:22, 22:23, 22:25,
 23:1, 23:6, 23:8,
 23:10, 23:12, 23:15,
 23:17, 23:18, 23:19,
 23:20, 23:21, 23:22,

23:23, 24:1, 24:4,
24:9, 24:13, 24:17,
24:19, 24:21, 24:22,
24:23, 24:24, 25:1,
25:2, 25:6, 25:8,
25:12, 25:15, 25:16,
25:17, 26:6, 26:11,
26:14, 26:16, 26:17,
26:19, 26:20, 26:21,
26:23, 27:1, 27:2,
27:4, 27:5, 27:6,
27:7, 27:8, 27:12,
27:13, 27:14, 27:17,
27:20, 27:21, 28:3,
28:13, 28:14, 29:16,
29:17, 29:19, 29:22,
30:1, 30:2, 30:6,
30:7, 30:8, 30:10,
30:12, 30:13, 30:14,
30:15, 30:19, 30:20,
30:21, 30:22, 31:1,
31:7, 31:8, 31:9,
31:11, 31:13, 31:20,
31:24, 32:2, 32:3,
32:6, 32:7, 32:10,
32:11, 32:13, 32:17,
33:1, 33:2, 33:3,
33:5, 33:7, 33:11,
33:12, 33:13, 33:15,
33:17, 33:18, 33:22,
33:24, 34:2, 34:3,
34:7, 34:11, 34:15,
34:16, 34:18, 34:20,
34:22, 34:24, 35:5,
35:7, 35:10, 35:12,
35:13, 35:25, 36:2,
36:5, 36:6, 36:8,
36:9, 36:10, 36:11,
36:12, 36:17, 36:20,
36:22, 37:3, 37:4,
37:5, 37:6, 37:11,
37:14, 37:18, 38:2,
38:4, 38:10, 38:13,
38:14, 38:17, 38:24,
39:3, 39:5, 39:6,
39:11, 39:14, 39:16,
39:17, 39:20, 39:23,
39:24, 39:25, 40:6,
40:10, 40:11, 40:14,
40:16, 40:17, 40:18,
40:19, 40:21, 40:24,
40:25, 41:1, 41:2,
41:4, 41:8, 41:9,
41:10, 41:12, 41:15,
41:21, 41:22, 41:23,
42:3, 42:5, 42:9,
42:10, 42:12, 42:13,
42:16, 42:19, 42:21,
42:22, 42:24, 42:25,
43:1, 43:2, 43:5,
43:6, 43:8, 43:10,

43:12, 43:15, 43:17,
43:19, 43:20, 43:22,
43:23, 43:24, 44:2,
44:4, 44:5, 44:7,
44:11, 44:21, 44:22,
44:23, 44:24, 45:2,
45:6, 45:8, 45:11,
45:12, 45:16, 45:17,
45:18, 45:20, 45:21,
45:22, 45:24, 45:25,
46:1, 46:4, 46:7,
46:10, 46:14, 46:17,
46:22, 46:23, 47:1,
47:4, 47:8, 47:9,
47:10, 47:12, 47:14,
47:15, 47:22, 47:23,
47:25, 48:1, 48:7,
48:8, 48:10, 48:13,
48:14, 48:16, 48:17,
48:18, 48:20, 48:23,
49:7, 49:8, 49:9,
49:10, 49:11, 49:13,
49:18, 49:21, 49:22,
49:23, 49:24, 50:1,
50:2, 50:4, 50:5,
50:9, 50:12, 50:15,
50:19, 50:20, 50:21,
50:24, 50:25, 51:1,
51:5, 51:6, 51:8,
51:9, 51:11, 51:14,
51:18, 51:22, 52:5,
52:7, 52:8, 52:10,
52:11, 52:12, 52:15,
52:17, 52:18, 52:19,
52:20, 52:22, 52:23,
52:24, 52:25, 53:4,
53:5, 53:6, 53:10,
53:11, 53:12, 53:14,
53:19, 53:20, 53:21,
53:22, 54:1, 54:3,
54:5, 54:6, 54:12,
54:15, 54:19, 54:22,
54:25, 55:2, 55:4,
55:7, 55:9, 55:10,
55:12, 55:13, 55:15,
55:16, 55:21, 55:23,
55:24, 55:25, 56:2,
56:3, 56:7, 56:9,
56:10, 56:18, 56:19,
56:24, 56:25, 57:1,
57:2, 57:3, 57:10,
57:12, 57:13, 57:14,
57:19, 57:20, 57:21,
57:22, 57:23, 57:24,
57:25, 58:1, 58:2,
58:3, 58:7, 58:8,
58:13, 58:14, 58:15,
58:16, 58:18, 58:20,
59:1, 59:2, 59:3,
59:4, 59:5, 59:6,
59:7, 59:8, 59:9,

59:10, 59:11, 59:14,
59:15, 59:16, 59:17,
59:20, 59:21, 59:23,
59:24, 59:25, 60:3,
60:6, 60:8, 60:11,
60:13, 60:15, 60:21,
60:22, 60:23, 60:24,
60:25, 61:5, 61:7,
61:9, 61:16, 61:20,
61:21, 61:23, 61:25,
62:2, 62:9, 62:10,
62:11, 62:14, 62:20,
62:21, 62:25, 63:1,
63:3, 63:6, 63:12,
63:18, 63:19, 63:20,
63:23, 63:25, 64:1,
64:3, 64:6, 64:8,
64:10, 64:11, 64:12,
64:13, 64:15, 64:18,
64:20, 64:21, 64:23,
64:24, 65:1, 65:5,
65:6, 65:10, 65:12,
65:14, 65:15, 65:16,
65:21, 65:22, 65:25,
66:1, 66:2, 66:6,
66:9, 66:13, 66:16,
66:17, 66:22, 66:25,
67:4, 67:7, 67:8,
67:9, 67:10, 67:14,
67:15, 67:16, 67:17,
67:22, 67:24, 68:3,
68:4, 68:6, 68:9,
68:12, 68:13, 68:16,
68:17, 68:18, 68:20,
68:21, 68:23, 68:25,
69:1, 69:2, 69:5,
69:6, 69:7, 69:8,
69:9, 69:10, 69:20,
69:24, 69:25, 70:3,
70:4, 70:8, 70:9,
70:11, 70:13, 70:15,
70:16, 70:17, 70:19,
70:23, 70:24, 71:6,
71:7, 71:8, 71:12,
71:14, 71:17, 71:18,
71:19, 71:20, 72:2,
72:5, 72:7, 72:8,
72:10, 72:11, 72:15,
72:17, 72:18, 72:19,
72:21, 72:23, 72:24,
72:25, 73:1, 73:2,
73:3, 73:6, 73:7,
73:8, 73:9, 73:10,
73:12, 73:23, 73:25,
74:4, 74:7, 74:8,
74:10, 74:12, 74:13,
74:14, 74:16, 74:19,
74:23, 75:3, 75:5,
75:6, 75:7, 75:10,
75:11, 75:13, 75:14,
75:15, 75:20, 75:22,

75:23, 76:5, 76:8,
76:12, 76:17, 76:22,
76:23, 77:1, 77:2,
77:3, 77:5, 77:9,
77:10, 77:11, 77:12,
77:16, 77:17, 77:18,
77:21, 77:22, 77:23,
77:24, 78:1, 78:7,
78:10, 78:12, 78:13,
78:16, 78:17, 78:20,
78:21, 78:23, 78:24,
78:25, 79:4, 79:5,
79:8, 79:10, 79:13,
79:14, 79:15, 79:16,
79:17, 79:21, 79:22,
79:25, 80:3, 80:4,
80:6, 80:17, 80:19,
80:22, 80:25, 81:2,
81:4, 81:7, 81:8,
81:11, 81:12, 81:14,
81:15, 81:18, 81:20,
81:25, 82:1, 82:2,
82:4, 82:8, 82:10,
82:12, 82:13, 82:14,
82:17, 82:19, 82:20,
82:21, 82:23, 83:1,
83:5, 83:6, 83:9,
83:10, 83:11, 83:12,
83:13, 83:14, 83:17,
83:19, 83:23, 83:24,
83:25, 84:1, 84:3,
84:6, 84:7, 84:8,
84:9, 84:12, 84:14,
84:15, 84:16, 84:17,
84:19, 84:21, 84:22,
84:25, 85:1, 85:7,
85:12, 85:13, 85:16,
85:22, 85:23, 85:24,
86:1, 86:7, 86:9,
86:12, 86:13, 86:16,
86:18, 86:20, 86:22,
86:23, 86:24, 86:25,
87:3, 87:5, 87:7,
87:9, 87:10, 87:11,
87:15, 87:19, 87:22,
88:1, 88:3, 88:4,
88:5, 88:6, 88:11,
88:12, 88:15, 88:20,
88:23, 88:25, 89:1,
89:2, 89:3, 89:5,
89:8, 89:10, 89:12,
89:16, 89:19, 89:20,
89:21, 89:24, 89:25,
90:2, 90:3, 90:4,
90:7, 90:8, 90:9,
90:10, 90:13, 90:14,
90:17, 90:22, 90:24,
91:1, 91:2, 91:4,
91:10, 91:11

23:6, 24:16, 25:9,
25:21, 26:1, 26:10,
26:18, 26:25, 27:8,
28:9, 28:20, 28:23,
29:3, 29:11, 29:20,
31:14, 31:15, 32:5,
34:14, 34:21, 36:10,
37:13, 46:19, 48:15,
48:21, 56:8, 56:19,
58:22, 59:12, 64:5,
66:15, 73:14

THEM ^[19] - 9:12,
13:3, 26:24, 27:11,
29:12, 29:13, 31:18,
36:9, 36:19, 37:8,
37:9, 44:11, 46:21,
48:24, 59:24, 72:23,
77:8, 77:9, 83:7

THEMSELVES ^[3] -
28:7, 30:9, 71:12

THEN ^[64] - 4:1, 4:3,
9:7, 9:16, 9:24,
10:12, 13:8, 20:7,
20:13, 20:19, 22:13,
23:1, 23:18, 24:2,
25:5, 26:5, 26:21,
27:8, 29:10, 29:24,
36:13, 41:18, 41:22,
41:23, 43:20, 45:24,
47:4, 48:6, 49:16,
49:24, 50:25, 51:24,
54:1, 55:20, 60:12,
61:18, 65:8, 69:2,
71:14, 72:16, 72:24,
73:5, 73:11, 73:15,
73:20, 74:6, 74:9,
74:13, 74:14, 75:12,
75:25, 77:3, 78:8,
78:10, 78:20, 79:17,
81:12, 82:9, 82:10,
82:17, 82:20, 83:15,
84:10, 88:22

THEORETICALLY ^[1]
- 16:21

THERE ^[111] - 4:4, 8:7,
10:11, 12:5, 12:19,
13:8, 15:5, 15:13,
16:12, 16:14, 17:4,
17:18, 17:24, 18:6,
18:13, 19:3, 20:14,
20:15, 20:19, 27:15,
32:25, 33:4, 34:4,
34:7, 34:8, 34:19,
35:5, 35:6, 35:8,
35:22, 36:23, 37:11,
37:12, 38:15, 38:16,
39:12, 39:18, 39:20,
40:20, 41:3, 41:19,
41:20, 42:2, 42:14,
43:8, 43:21, 44:9,

THEIR ^[37] - 11:2,
13:10, 14:12, 22:25,

44:11, 44:24, 45:7,
47:16, 47:18, 47:20,
47:21, 48:6, 48:12,
48:13, 48:25, 49:1,
49:24, 50:8, 50:18,
51:12, 51:22, 52:11,
53:12, 54:20, 56:1,
56:2, 56:8, 56:11,
56:12, 56:21, 57:6,
57:17, 57:18, 58:24,
59:5, 59:7, 59:8,
59:22, 60:22, 61:3,
61:13, 61:14, 62:4,
62:16, 63:17, 64:3,
65:7, 66:6, 66:7,
67:5, 67:16, 68:14,
68:21, 69:4, 70:25,
77:10, 78:10, 79:6,
79:11, 81:9, 81:21,
81:22, 86:3, 86:14,
86:23
THERE'S [7] - 14:2,
20:14, 20:17, 60:8,
68:1, 85:16, 86:21
THEREFORE [7] -
7:19, 23:7, 29:17,
40:21, 63:4, 63:7,
90:17
THEREOF [3] - 80:7,
80:12, 89:23
THESE [26] - 4:5, 11:3,
12:18, 22:22, 25:12,
25:15, 25:21, 26:13,
26:19, 30:2, 31:19,
32:1, 35:12, 37:8,
37:15, 38:5, 38:11,
55:6, 58:10, 58:11,
59:22, 61:2, 61:19,
61:20, 63:5, 71:23
THEY [133] - 7:15,
7:20, 7:23, 10:16,
12:6, 12:7, 12:19,
16:6, 16:8, 16:9,
17:9, 17:10, 18:20,
18:24, 19:3, 20:6,
20:7, 20:18, 22:23,
25:10, 25:11, 25:18,
25:19, 25:23, 25:24,
26:7, 26:9, 26:18,
26:22, 26:24, 27:4,
27:8, 28:2, 28:3,
28:4, 28:9, 28:22,
29:11, 29:14, 29:16,
29:17, 29:20, 29:21,
29:24, 30:3, 30:7,
31:3, 31:15, 31:25,
32:1, 32:2, 32:3,
32:4, 32:5, 32:12,
32:13, 32:14, 32:15,
32:24, 32:25, 33:12,
33:15, 33:19, 34:8,
34:14, 35:8, 35:16,
35:24, 36:8, 36:9,
36:11, 36:14, 36:16,
36:17, 37:3, 37:4,
37:5, 37:6, 37:7,
37:11, 37:14, 37:17,
37:21, 38:3, 38:6,
38:9, 41:14, 42:10,
42:24, 43:9, 44:19,
44:20, 48:6, 48:10,
48:22, 58:16, 59:4,
59:8, 59:10, 59:25,
60:1, 62:5, 63:2,
63:3, 63:6, 64:4,
64:18, 64:19, 66:14,
69:11, 70:12, 71:9,
71:13, 76:13, 84:22,
85:16, 85:17, 86:13,
87:1, 89:15, 89:16
THING [16] - 15:10,
16:1, 33:20, 36:6,
50:4, 54:3, 62:2,
62:3, 62:6, 64:2,
66:18, 72:12, 75:6,
82:21, 85:9, 89:14
THINGS [19] - 3:21,
3:22, 10:15, 12:5,
12:8, 12:18, 14:7,
24:20, 27:16, 35:22,
41:14, 44:10, 47:13,
48:22, 56:20, 61:7,
71:10, 71:20, 77:11
THINK [74] - 4:4, 7:21,
7:23, 8:25, 10:20,
10:21, 12:9, 12:14,
12:15, 12:20, 14:19,
16:5, 16:12, 19:16,
19:18, 20:24, 27:3,
27:20, 30:15, 30:21,
32:8, 32:21, 33:15,
34:1, 34:2, 39:20,
39:22, 40:3, 41:12,
41:17, 41:18, 41:25,
44:14, 44:19, 47:24,
48:2, 51:18, 51:21,
52:11, 52:19, 53:18,
54:23, 55:20, 56:18,
56:20, 57:18, 61:1,
61:6, 61:24, 62:2,
62:4, 62:7, 62:9,
62:15, 64:18, 64:19,
66:12, 71:13, 74:17,
74:22, 74:25, 75:2,
76:10, 81:1, 83:10,
84:20, 85:7, 85:19,
86:11, 87:17, 87:24,
89:24, 90:13
THINKING [1] - 89:16
THINKS [4] - 32:25,
63:1, 63:3, 86:14
THIRD [2] - 20:19,
49:5
THIRD-PARTY [1] -
49:5
THIS [141] - 3:3, 3:24,
5:9, 6:20, 7:6, 7:12,
8:13, 10:10, 10:20,
11:10, 12:20, 12:24,
13:2, 13:17, 13:18,
13:19, 14:7, 14:11,
15:14, 16:19, 20:7,
21:20, 22:6, 22:20,
26:7, 26:18, 26:22,
30:18, 30:22, 31:18,
32:22, 33:20, 34:5,
34:17, 34:19, 35:13,
35:15, 35:17, 35:18,
36:7, 36:9, 36:18,
36:19, 37:1, 37:7,
37:11, 37:19, 37:20,
37:25, 38:1, 38:5,
38:19, 38:25, 39:10,
39:19, 40:10, 40:16,
40:21, 44:1, 45:21,
46:14, 46:17, 47:5,
47:11, 47:20, 47:21,
48:21, 48:25, 50:1,
50:4, 50:16, 51:17,
51:21, 51:23, 53:8,
53:15, 53:21, 56:14,
56:24, 57:8, 57:10,
58:6, 58:9, 60:4,
60:17, 60:24, 61:1,
61:5, 61:7, 61:8,
61:15, 62:11, 62:22,
62:24, 62:25, 63:7,
64:6, 65:16, 65:17,
65:18, 66:18, 67:5,
68:17, 70:2, 70:20,
71:3, 73:2, 73:11,
74:23, 74:25, 78:3,
80:7, 80:13, 81:22,
83:11, 83:15, 83:24,
84:23, 85:6, 85:7,
85:9, 85:10, 85:15,
85:17, 85:19, 85:21,
86:9, 86:18, 87:4,
88:4, 88:5, 88:17,
88:23, 88:25, 89:9,
89:14, 90:18
THOSE [24] - 6:4,
10:14, 12:8, 27:16,
27:17, 31:2, 31:3,
31:4, 31:23, 37:21,
41:13, 42:11, 48:11,
48:19, 48:23, 51:17,
55:17, 56:5, 61:10,
61:22, 68:13, 69:6,
77:5, 83:9
THOUGH [1] - 39:6
THOUGHT [5] - 65:17,
68:8, 80:19, 82:7,
82:11
THOUGHTS [1] -
50:16
THOUSANDS [1] -
29:1
THREE [7] - 20:8,
20:9, 31:15, 38:2,
42:4, 42:14, 42:15
THROUGH [22] - 3:23,
10:11, 13:1, 20:18,
23:16, 23:20, 24:2,
25:4, 25:5, 26:17,
27:1, 27:11, 29:13,
32:2, 32:9, 32:10,
37:9, 48:16, 68:16,
77:16, 86:23
TIKTOK [2] - 26:2,
26:6
TIME [27] - 14:15,
15:4, 26:16, 27:1,
27:12, 31:24, 33:19,
36:7, 36:9, 36:12,
36:17, 37:5, 37:17,
47:19, 53:24, 62:19,
62:20, 64:6, 70:9,
72:13, 81:5, 88:8,
88:21, 88:24, 89:2,
89:3
TIMES [1] - 37:20
TO [566] - 3:15, 3:20,
3:23, 4:2, 4:17, 4:23,
4:25, 5:9, 5:15, 5:25,
6:1, 6:2, 6:4, 6:7,
6:12, 6:16, 6:23, 7:4,
7:9, 7:15, 7:16, 7:18,
7:22, 8:6, 9:8, 9:12,
9:17, 10:3, 10:4,
10:5, 10:6, 10:9,
10:13, 10:14, 10:19,
10:21, 10:24, 11:3,
11:9, 11:18, 12:4,
12:6, 12:8, 12:17,
12:18, 12:22, 12:23,
13:3, 13:9, 13:24,
13:25, 14:24, 15:20,
16:7, 16:9, 16:15,
16:16, 16:20, 16:24,
17:1, 17:4, 17:7,
17:8, 17:10, 17:18,
17:20, 17:23, 18:3,
18:4, 18:5, 18:6,
18:9, 18:10, 18:13,
18:16, 18:23, 19:2,
19:22, 19:23, 19:24,
20:1, 20:6, 20:7,
20:11, 20:21, 20:22,
21:8, 21:10, 21:15,
21:18, 21:21, 22:4,
22:8, 22:9, 22:12,
22:17, 22:21, 23:8,
23:11, 23:13, 23:18,
23:20, 23:21, 23:22,
23:23, 24:2, 24:9,
24:11, 24:13, 24:15,
24:16, 24:21, 24:22,
24:23, 25:1, 25:5,
25:6, 25:10, 25:11,
25:12, 25:21, 25:24,
26:6, 26:8, 26:13,
26:18, 26:20, 26:21,
26:25, 27:1, 27:3,
27:5, 27:11, 27:13,
27:16, 27:18, 27:23,
27:25, 28:2, 28:13,
28:17, 29:1, 29:11,
29:13, 29:14, 29:18,
29:25, 30:4, 30:7,
30:8, 30:10, 30:11,
30:12, 30:18, 30:23,
31:5, 31:8, 31:10,
31:14, 31:18, 32:2,
32:7, 32:16, 32:20,
32:25, 33:5, 33:6,
33:9, 33:10, 33:13,
33:16, 33:18, 33:19,
34:11, 34:17, 34:25,
35:1, 35:3, 35:4,
35:6, 35:9, 35:11,
35:14, 35:20, 35:22,
35:23, 36:1, 36:2,
36:3, 36:4, 36:8,
36:15, 36:19, 36:20,
37:1, 37:4, 37:18,
37:21, 38:6, 38:13,
38:14, 38:19, 38:22,
39:2, 39:5, 39:10,
39:11, 39:14, 39:15,
39:21, 39:25, 40:1,
40:19, 40:20, 40:24,
41:3, 41:4, 41:18,
41:22, 41:23, 42:4,
42:7, 42:24, 43:1,
43:15, 43:24, 44:6,
44:10, 44:17, 45:3,
45:4, 45:8, 45:15,
45:24, 46:3, 46:6,
46:16, 47:2, 47:3,
47:4, 47:5, 47:7,
47:19, 48:4, 48:5,
48:20, 48:21, 48:23,
48:24, 49:5, 49:8,
49:16, 49:19, 50:15,
50:16, 50:17, 50:22,
51:3, 51:16, 51:19,
51:21, 51:23, 51:25,
52:1, 52:2, 52:7,
52:8, 52:9, 52:25,
53:10, 53:18, 53:19,

53:22, 54:5, 54:6,
54:17, 54:24, 54:25,
55:4, 55:6, 55:13,
55:17, 55:23, 55:25,
56:5, 56:8, 56:9,
56:14, 56:16, 56:18,
57:3, 57:14, 57:15,
57:20, 57:21, 57:25,
58:1, 58:2, 58:8,
58:13, 58:16, 58:20,
58:24, 59:1, 59:3,
59:7, 59:8, 59:14,
59:15, 59:22, 60:5,
60:14, 60:19, 60:20,
61:6, 61:8, 61:11,
61:12, 61:14, 61:16,
61:18, 61:20, 61:21,
61:22, 62:1, 62:3,
62:7, 62:8, 62:9,
62:10, 62:13, 62:19,
62:20, 62:22, 62:23,
62:25, 63:7, 63:15,
63:16, 63:17, 63:18,
63:19, 63:23, 63:25,
64:2, 64:3, 64:5,
64:7, 64:9, 64:16,
64:18, 64:21, 64:25,
65:8, 65:9, 65:18,
65:22, 65:23, 65:25,
66:6, 66:14, 66:15,
66:22, 67:1, 67:9,
67:10, 67:25, 68:4,
68:7, 68:9, 68:16,
68:18, 68:19, 68:20,
68:21, 68:22, 69:3,
69:4, 69:8, 69:11,
69:23, 70:10, 70:13,
70:15, 70:18, 70:21,
70:22, 70:23, 70:24,
71:1, 71:17, 71:19,
71:20, 71:23, 72:2,
72:6, 72:8, 72:12,
72:18, 72:19, 72:23,
72:24, 73:3, 73:4,
73:5, 73:7, 73:8,
73:9, 73:13, 73:14,
73:15, 73:16, 73:17,
73:19, 73:20, 73:22,
74:9, 74:20, 74:22,
75:1, 75:7, 75:15,
75:18, 75:20, 75:22,
75:23, 75:25, 76:1,
76:2, 76:15, 76:17,
76:19, 77:2, 77:5,
77:8, 77:11, 77:12,
77:16, 77:18, 77:19,
77:20, 77:21, 78:2,
78:4, 78:6, 78:11,
78:12, 78:14, 78:20,
79:3, 79:11, 79:18,
79:25, 81:1, 81:3,

81:9, 81:13, 81:14,
81:21, 82:7, 82:10,
82:11, 82:18, 82:19,
82:24, 83:5, 83:8,
83:20, 83:21, 83:22,
84:7, 84:11, 84:15,
84:17, 84:18, 84:22,
84:23, 84:24, 84:25,
85:8, 85:16, 85:17,
85:18, 85:19, 86:6,
86:12, 86:14, 86:18,
86:23, 86:25, 87:2,
87:20, 87:23, 88:6,
88:7, 88:8, 88:9,
88:17, 89:1, 89:6,
89:9, 89:13, 89:14,
89:15, 90:10, 90:14,
90:16, 90:19, 90:20,
91:1
TODAY [14] - 8:21,
26:3, 26:8, 33:24,
52:2, 65:14, 69:17,
72:1, 73:4, 73:21,
74:23, 88:7, 89:11,
90:17
TOGETHER [6] -
52:13, 52:14, 52:15,
52:16, 71:24, 73:13
TOLD [5] - 12:7,
12:21, 45:3, 45:7,
55:24
TOO [5] - 34:2, 55:18,
87:12, 87:17, 88:16
TOP [2] - 79:14, 79:17
TOPICS [1] - 55:4
TOTAL [2] - 37:11,
38:8
TOUGH [1] - 51:25
TRACK [1] - 27:13
TRADE [8] - 1:3, 1:16,
3:3, 3:11, 4:6, 6:9,
21:14, 22:7
TRADITIONAL [3] -
6:2, 6:19, 6:23
TRAFFIC [1] - 60:17
TRAIN [1] - 13:22
TRANSACTIONS [1] -
59:4
TRANSCRIPT [2] -
1:25, 91:11
TRANSCRIPTION [1] -
1:25
TRIAL [2] - 22:3, 51:25
TRIED [1] - 29:11
TRO [50] - 3:24, 4:1,
6:1, 6:3, 7:6, 7:12,
8:8, 8:14, 10:10,
16:13, 16:14, 16:15,
16:18, 17:19, 18:2,
18:6, 18:14, 20:5,

20:12, 23:4, 25:16,
27:21, 27:22, 40:16,
40:21, 41:10, 42:10,
45:22, 48:18, 48:23,
53:12, 53:14, 58:2,
60:21, 62:21, 63:7,
67:9, 67:16, 71:7,
72:15, 72:24, 73:6,
74:4, 74:7, 74:13,
77:2, 78:21, 84:3,
85:8
TROPHIES [1] - 25:24
TROS [1] - 6:1
TROUBLED [1] -
28:16
TRUE [3] - 25:1,
30:14, 32:19
TRUTH [1] - 50:15
TRUTHFUL [1] - 39:7
TRY [3] - 3:21, 12:12,
27:13
TRYING [4] - 11:18,
16:16, 18:23, 35:23
TUNED [1] - 55:18
TURN [15] - 4:24, 7:22,
9:13, 12:4, 15:16,
18:16, 25:5, 30:10,
38:22, 44:15, 54:2,
54:25, 55:13, 64:12,
64:13
TURNOVER [1] -
15:12
TWO [18] - 18:5,
24:17, 30:13, 31:13,
31:16, 33:18, 38:1,
38:8, 42:4, 42:11,
42:13, 42:22, 43:22,
48:13, 55:21, 69:14,
78:21, 78:22
TYPE [4] - 51:6, 87:10,
88:17, 89:3
TYPES [1] - 37:15
TYPICAL [5] - 26:19,
29:17, 29:24, 30:3,
30:16
TYPICALLY [4] -
53:12, 53:14, 70:12,
72:17

U

U.S [1] - 7:14
U.S.C [10] - 4:13, 4:15,
4:18, 4:19, 5:3, 5:5,
5:8, 24:6, 67:9,
84:25
ULTIMATE [3] - 6:7,
52:24, 81:3
UNABLE [1] - 63:16
UNDER [60] - 4:17,

5:8, 7:25, 8:3, 8:4,
8:6, 8:18, 11:5, 11:6,
11:8, 11:23, 11:24,
12:1, 12:19, 13:4,
15:7, 15:14, 15:15,
19:10, 19:17, 20:24,
20:25, 22:2, 23:9,
23:10, 23:12, 23:16,
24:7, 24:9, 28:3,
29:19, 36:10, 37:3,
41:13, 41:15, 41:21,
42:3, 42:25, 43:16,
43:17, 43:18, 43:22,
44:3, 44:6, 44:14,
44:19, 53:8, 54:13,
55:2, 55:4, 59:7,
59:10, 65:16, 65:22,
72:7, 81:15, 83:14,
85:4, 86:5
UNDERCOVER [1] -
30:4
UNDERPERFORMIN
G [1] - 28:21
UNDERSTAND [18] -
7:11, 7:18, 10:9,
10:18, 26:20, 27:6,
29:24, 37:2, 45:17,
54:19, 62:20, 63:1,
63:3, 63:22, 67:13,
69:15, 76:18, 77:1
UNDERSTANDING
[14] - 15:21, 16:19,
18:10, 18:18, 27:21,
27:22, 40:17, 49:7,
53:9, 62:10, 62:23,
64:17, 64:19, 87:21
UNDERSTOOD [4] -
65:14, 66:3, 69:12,
81:21
UNEDUCATED [1] -
62:24
UNFAIR [2] - 22:24,
23:5
UNITED [3] - 1:1,
79:17, 89:3
UNLAWFUL [2] -
46:15, 61:1
UNLESS [5] - 40:12,
41:4, 54:7, 86:13,
88:20
UNOPPOSED [1] -
71:25
UNSATISFIED [1] -
59:23
UNTIL [3] - 31:9,
61:15, 90:18
UP [13] - 13:23, 31:15,
31:17, 32:12, 49:23,
50:8, 59:11, 60:15,
60:19, 63:13, 70:18,

73:18, 90:20
UPLOAD [1] - 48:5
UPON [4] - 22:15,
52:22, 86:17, 87:3
UPSET [1] - 51:25
US [9] - 35:18, 37:7,
47:3, 50:14, 56:1,
87:13, 88:14, 89:2,
90:20
USE [4] - 30:2, 48:5,
70:5, 76:23
USED [8] - 14:17,
16:20, 26:4, 26:9,
57:21, 59:3, 70:4,
83:2
USING [7] - 26:7,
29:16, 42:19, 47:22,
48:21, 61:23, 61:24
USUALLY [2] - 6:1,
71:11

V

VA [1] - 2:3
VALID [1] - 36:8
VARIOUS [1] - 12:5
VEHICLE [3] - 12:25,
14:17, 19:23
VENN [2] - 48:11, 56:4
VERSION [10] - 49:16,
62:14, 78:9, 79:8,
81:18, 81:20, 82:12,
82:13, 83:9
VERSIONS [1] - 89:8
VERSUS [7] - 1:5, 3:4,
6:9, 6:14, 7:14,
24:18, 25:3
VERY [20] - 26:19,
35:22, 36:25, 37:15,
42:4, 42:12, 43:7,
50:1, 57:4, 57:5,
58:5, 58:12, 60:25,
62:11, 65:13, 69:3,
70:16, 85:13, 88:23,
91:4
VICTIMIZATION [2] -
58:23, 58:25
VICTIMIZED [1] -
59:15
VICTIMS [1] - 48:23
VIDEO [2] - 27:14,
34:21
VIDEOS [3] - 35:14,
35:16, 58:9
VIEW [8] - 9:2, 9:25,
10:2, 19:5, 41:13,
41:20, 62:11, 62:24
VIEWPOINT [1] - 9:22
VIOLATE [3] - 21:18,
22:17, 22:21

VIOLATED ^[1] - 22:18
VIOLATING ^[3] -
 21:18, 22:17, 22:21
VIOLATIONS ^[4] -
 4:12, 11:14, 22:10,
 44:4
VIRTUE ^[1] - 39:5
VS ^[1] - 24:10

W

WAIT ^[4] - 55:12,
 55:15, 78:2, 89:15
WANT ^[37] - 10:9,
 12:8, 13:23, 15:14,
 15:21, 16:8, 35:4,
 35:20, 36:2, 37:1,
 48:4, 51:4, 51:23,
 53:23, 54:7, 54:17,
 54:25, 55:1, 55:25,
 61:10, 62:23, 63:3,
 67:25, 70:23, 71:1,
 75:15, 75:20, 77:11,
 84:7, 85:9, 87:12,
 89:9, 89:13, 89:14,
 90:14, 91:1
WANTED ^[2] - 36:4,
 57:3
WANTS ^[3] - 35:9,
 62:9, 72:2
WARRANTED ^[2] -
 83:14, 84:2
WARREN ^[1] - 2:6
WAS ^[52] - 8:1, 10:11,
 12:21, 14:7, 16:14,
 16:18, 17:16, 18:13,
 19:3, 22:2, 22:7,
 25:1, 27:5, 28:16,
 29:8, 30:14, 30:16,
 30:17, 31:10, 33:22,
 34:7, 36:5, 36:6,
 38:16, 41:1, 57:11,
 60:4, 65:14, 65:15,
 65:17, 65:18, 66:1,
 66:2, 66:13, 68:6,
 68:8, 68:20, 71:15,
 78:7, 79:2, 79:4,
 80:8, 80:19, 81:21,
 81:22, 89:7, 90:3
WASHINGTON ^[4] -
 1:18, 2:3, 2:7, 87:12
WAY ^[19] - 12:7, 12:8,
 12:25, 13:5, 13:19,
 14:23, 44:7, 45:17,
 48:19, 49:20, 52:8,
 57:23, 58:3, 60:4,
 60:11, 68:25, 69:16,
 73:2, 87:19
WE ^[222] - 3:24, 4:1,
 4:2, 4:3, 5:25, 7:9,

7:25, 8:2, 8:9, 8:10,
 8:15, 8:16, 8:20,
 8:21, 8:22, 8:23,
 10:8, 10:9, 11:8,
 11:19, 12:4, 12:13,
 12:21, 12:22, 13:2,
 13:19, 14:3, 14:16,
 15:14, 15:22, 16:4,
 18:19, 18:25, 20:4,
 20:5, 20:8, 21:9,
 21:23, 23:15, 23:18,
 23:19, 24:2, 25:5,
 25:14, 26:16, 26:25,
 27:4, 27:7, 27:8,
 27:11, 27:13, 27:15,
 28:4, 28:16, 30:4,
 30:7, 31:8, 31:9,
 31:10, 31:11, 31:17,
 31:24, 32:7, 32:21,
 33:2, 33:3, 33:4,
 33:8, 34:17, 34:20,
 35:7, 35:18, 35:20,
 36:13, 36:22, 36:23,
 37:19, 39:12, 39:16,
 39:19, 40:5, 40:9,
 40:18, 41:9, 41:10,
 41:18, 41:22, 41:23,
 42:2, 42:4, 42:9,
 42:15, 42:21, 43:25,
 44:2, 44:3, 44:10,
 45:1, 45:8, 45:13,
 45:15, 45:16, 45:18,
 47:2, 47:3, 47:7,
 47:10, 47:11, 49:7,
 49:15, 49:16, 49:19,
 49:24, 50:24, 51:14,
 52:7, 52:8, 52:9,
 53:20, 53:24, 54:10,
 54:18, 55:20, 57:4,
 57:5, 57:8, 57:9,
 58:7, 58:8, 60:2,
 60:16, 60:20, 61:15,
 62:1, 62:9, 63:15,
 63:16, 63:19, 63:22,
 63:24, 64:2, 64:5,
 64:9, 65:4, 65:15,
 66:5, 66:21, 66:22,
 67:25, 68:11, 69:6,
 69:8, 70:2, 70:10,
 72:3, 72:6, 72:8,
 72:9, 72:16, 72:18,
 72:22, 74:4, 74:6,
 74:13, 74:23, 74:25,
 75:8, 75:12, 75:17,
 75:19, 75:23, 75:24,
 76:9, 76:10, 76:14,
 76:15, 76:22, 77:1,
 77:7, 77:15, 77:19,
 78:1, 78:8, 78:11,
 78:13, 78:25, 80:17,
 80:19, 81:13, 81:18,

81:20, 82:6, 82:7,
 82:11, 82:15, 85:8,
 85:21, 86:6, 87:6,
 88:6, 88:8, 88:10,
 89:5, 89:8, 89:10,
 89:11, 89:15, 90:20,
 90:21
WE'VE ^[1] - 35:25
WEB ^[1] - 29:22
WEBSITE ^[2] - 34:22,
 35:13
WEDNESDAY ^[2] -
 33:23, 60:4
WEEK ^[4] - 35:13,
 50:24, 58:9, 71:22
WEEKEND ^[1] - 90:18
WEIGHED ^[1] - 81:2
WEIGHING ^[3] - 6:6,
 52:22, 83:11
WEIGHT ^[2] - 7:3, 46:2
WELL ^[28] - 3:11,
 6:14, 8:19, 8:24, 9:2,
 14:20, 16:23, 17:13,
 18:19, 32:12, 32:17,
 44:13, 45:21, 51:17,
 54:11, 57:4, 69:1,
 70:4, 72:3, 74:13,
 76:18, 77:22, 78:9,
 79:14, 82:25, 83:4,
 86:11, 86:22
WENDY ^[2] - 1:11,
 89:4
WENT ^[2] - 10:11, 32:2
WERE ^[24] - 19:3,
 25:21, 28:2, 28:10,
 29:14, 32:1, 33:20,
 34:8, 36:9, 36:12,
 37:5, 38:4, 38:18,
 48:23, 64:2, 65:4,
 66:14, 68:3, 76:13,
 76:15, 82:7, 82:11,
 85:8, 89:8
WHAT ^[127] - 3:20,
 3:25, 7:23, 9:3, 9:24,
 10:8, 10:17, 10:19,
 11:15, 11:19, 12:9,
 12:14, 14:19, 14:21,
 15:9, 15:12, 16:5,
 16:8, 16:24, 17:3,
 17:16, 18:3, 20:6,
 20:12, 20:17, 24:2,
 26:19, 26:20, 27:5,
 27:6, 27:14, 27:22,
 30:15, 30:21, 30:25,
 31:9, 31:10, 32:5,
 33:2, 33:6, 33:20,
 34:7, 34:10, 34:16,
 36:4, 37:12, 37:13,
 38:4, 39:8, 39:15,
 39:16, 39:19, 39:21,

40:3, 40:5, 40:6,
 40:10, 40:11, 40:23,
 41:1, 41:16, 41:19,
 43:5, 43:15, 44:8,
 45:7, 50:14, 50:16,
 51:3, 51:11, 51:16,
 51:22, 53:6, 54:6,
 54:10, 54:15, 54:25,
 56:18, 58:19, 59:21,
 60:16, 61:12, 64:4,
 64:18, 65:14, 65:17,
 65:20, 65:21, 66:12,
 66:14, 66:19, 68:3,
 68:7, 69:4, 69:8,
 69:11, 69:20, 70:8,
 70:12, 70:16, 70:22,
 71:12, 71:23, 72:18,
 73:18, 75:3, 75:18,
 75:22, 75:24, 78:6,
 78:17, 79:4, 79:15,
 81:1, 81:19, 81:20,
 82:11, 82:15, 83:9,
 83:22, 84:11, 84:16,
 84:20, 90:2, 90:4
WHATEVER ^[8] -
 10:13, 15:7, 47:5,
 54:5, 61:23, 68:16,
 68:18, 72:10
WHATSOEVER ^[2] -
 61:4, 61:14
WHEN ^[19] - 6:3,
 10:21, 12:18, 22:18,
 25:9, 29:10, 34:25,
 35:9, 36:15, 37:19,
 39:12, 42:7, 42:20,
 58:15, 59:1, 61:13,
 72:22, 74:25, 75:23
WHERE ^[22] - 8:9,
 10:9, 10:11, 10:15,
 10:16, 21:4, 34:14,
 35:10, 35:16, 47:7,
 48:21, 51:8, 51:24,
 53:15, 54:12, 58:6,
 61:3, 61:5, 72:8,
 72:17, 76:9, 86:20
WHETHER ^[16] - 6:8,
 20:6, 20:14, 20:24,
 21:20, 33:7, 33:10,
 38:15, 39:2, 45:1,
 58:3, 68:14, 71:15,
 83:15, 86:25, 90:16
WHICH ^[52] - 4:13,
 4:14, 4:18, 6:15,
 6:21, 7:14, 8:8, 12:1,
 16:8, 16:14, 20:20,
 22:14, 24:6, 26:25,
 27:6, 30:6, 42:25,
 43:23, 47:24, 51:11,
 52:11, 54:15, 56:3,
 56:4, 59:21, 61:22,

62:11, 67:17, 68:3,
 70:19, 70:25, 71:10,
 71:19, 73:3, 73:4,
 74:10, 80:8, 80:13,
 80:18, 82:21, 83:6,
 83:24, 85:10, 85:15,
 85:18, 85:19, 86:3,
 86:5, 86:10, 86:24
WHILE ^[6] - 22:25,
 23:6, 75:17, 77:15,
 78:1, 83:19
WHISTLES ^[1] - 30:16
WHO ^[18] - 3:23, 3:25,
 10:14, 17:20, 28:2,
 34:5, 34:8, 35:23,
 36:18, 38:11, 47:20,
 47:22, 48:8, 57:23,
 59:11, 61:20, 65:24,
 68:23
WHOLE ^[7] - 10:11,
 26:20, 26:21, 33:11,
 48:25, 50:4, 66:13
WHOSE ^[1] - 65:24
WHY ^[19] - 4:25,
 12:13, 14:25, 15:13,
 18:17, 25:4, 26:13,
 31:3, 31:4, 36:20,
 45:7, 46:20, 50:22,
 55:10, 71:9, 75:8,
 75:24, 78:25, 82:1
WIDE ^[1] - 55:5
WIDE-RANGING ^[1] -
 55:5
WILL ^[45] - 4:10, 11:2,
 12:10, 12:12, 14:21,
 24:2, 25:5, 26:20,
 26:22, 30:7, 34:24,
 39:11, 40:19, 44:5,
 46:21, 47:1, 50:18,
 50:19, 51:23, 54:1,
 55:3, 58:13, 60:16,
 61:9, 64:10, 71:12,
 71:21, 71:24, 73:4,
 73:11, 74:6, 74:12,
 74:13, 74:25, 75:12,
 75:17, 77:9, 78:5,
 79:12, 79:14, 82:2,
 86:3, 88:23, 90:21
WILLING ^[4] - 34:25,
 60:2, 64:5, 64:9
WING ^[4] - 47:11,
 47:15, 56:3, 56:13
WINNING ^[1] - 26:8
WISCHUSEN ^[2] - 2:2,
 3:19
WITH ^[85] - 3:18, 5:15,
 6:20, 8:1, 8:3, 9:4,
 12:14, 12:23, 13:15,
 14:16, 14:21, 15:19,
 16:19, 16:21, 18:15,

18:23, 20:11, 23:21, 23:22, 24:13, 25:19, 26:1, 26:11, 26:16, 27:3, 27:12, 27:17, 28:8, 30:22, 31:15, 31:17, 31:24, 32:6, 37:25, 38:5, 38:13, 39:25, 40:24, 42:5, 42:6, 43:1, 45:2, 45:4, 45:13, 45:18, 47:3, 47:7, 51:3, 54:22, 56:2, 56:5, 56:19, 57:8, 59:4, 60:23, 60:24, 61:9, 62:3, 63:13, 63:16, 63:18, 68:19, 70:18, 72:24, 73:18, 74:4, 75:17, 77:11, 77:16, 77:21, 80:10, 81:13, 82:15, 83:16, 84:11, 85:24, 87:1, 87:13, 87:15, 88:14, 89:8, 89:9

WITHIN ^[12] - 19:2, 43:8, 48:10, 48:11, 52:22, 53:3, 74:4, 75:4, 75:8, 85:5, 85:21, 88:20

WITHOUT ^[5] - 26:23, 53:2, 58:12, 60:5, 72:3

WORD ^[5] - 49:16, 60:15, 62:14, 79:13, 80:1

WORDS ^[8] - 22:17, 22:22, 25:21, 37:16, 60:17, 76:13, 76:16, 86:7

WORK ^[11] - 53:20, 53:23, 61:8, 62:7, 62:13, 62:17, 63:12, 71:24, 72:5, 73:13, 75:17

WORKED ^[1] - 77:15

WORKING ^[5] - 25:19, 45:15, 56:2, 59:24, 76:6

WORKS ^[6] - 45:18, 60:12, 61:12, 70:21, 72:10, 88:5

WORLD ^[1] - 45:22

WORLDWIDE ^[3] - 6:14, 7:4, 46:2

WOULD ^[94] - 5:18, 6:8, 12:16, 12:17, 12:23, 13:13, 13:21, 15:3, 15:5, 15:6, 16:20, 16:21, 16:23, 16:24, 17:3, 17:19, 18:7, 18:8, 18:9, 18:15, 19:9, 19:13, 20:3, 23:21, 23:22, 25:19, 27:15, 27:17, 27:18, 32:22, 32:23, 40:18, 40:25, 41:15, 42:9, 42:10, 43:13, 43:18, 44:2, 44:3, 44:13, 47:2, 48:23, 49:4, 49:20, 51:1, 51:4, 51:10, 51:22, 52:24, 57:12, 57:14, 57:25, 58:2, 59:6, 59:8, 59:12, 60:22, 61:16, 61:20, 61:21, 62:3, 64:12, 68:7, 69:18, 70:10, 70:12, 70:13, 70:25, 71:7, 71:9, 71:10, 71:13, 71:14, 71:24, 72:7, 72:16, 72:18, 73:12, 73:13, 74:4, 74:22, 81:7, 82:10, 82:24, 83:21, 83:22, 84:10, 84:11, 85:14, 87:6, 90:17

WOULDN'T ^[2] - 15:5, 18:17

WRONG ^[6] - 4:11, 53:8, 66:12, 79:8, 81:20, 81:25

Y

YEAH ^[1] - 78:24

YEARS ^[1] - 38:9

YES ^[43] - 3:7, 3:9, 5:13, 5:14, 5:23, 5:24, 7:7, 7:8, 7:24, 11:10, 11:15, 11:17, 15:2, 16:2, 19:15, 25:7, 25:14, 28:1, 41:8, 42:14, 42:16, 46:12, 50:11, 55:2, 56:22, 66:18, 67:3, 71:5, 76:21, 77:4, 77:13, 80:16, 83:1, 84:5, 84:9, 84:12, 85:25, 86:8, 87:5, 87:16, 88:2, 88:19, 89:18

YESTERDAY ^[2] - 33:21, 49:17

YET ^[3] - 36:23, 36:24, 54:20

YOU ^[271] - 8:12, 8:25, 9:3, 9:7, 9:12, 9:16, 9:20, 10:5, 10:9, 10:11, 10:14, 10:15, 10:17, 10:18, 10:19, 10:23, 11:4, 11:5, 11:6, 11:11, 11:22, 11:24, 11:25, 12:8, 12:9, 12:14, 13:8, 13:13, 13:21, 13:22, 13:23, 13:24, 14:20, 14:24, 15:7, 15:8, 15:14, 15:21, 16:7, 16:21, 17:13, 17:24, 18:2, 18:3, 18:7, 18:9, 18:10, 19:9, 19:18, 20:1, 20:18, 20:20, 20:22, 20:24, 21:9, 21:12, 23:21, 23:22, 24:2, 25:4, 26:15, 26:21, 27:22, 28:16, 30:20, 30:21, 30:25, 31:2, 31:6, 31:22, 33:5, 33:10, 33:11, 33:13, 33:20, 34:25, 35:2, 35:17, 35:18, 35:19, 36:1, 36:6, 36:16, 36:24, 37:19, 38:2, 38:3, 39:14, 39:15, 39:23, 39:24, 40:3, 40:10, 40:12, 41:14, 41:16, 41:17, 41:23, 42:7, 42:20, 44:5, 44:8, 44:13, 45:3, 45:7, 45:17, 46:25, 47:14, 47:24, 49:13, 49:20, 50:6, 50:9, 50:14, 50:15, 50:16, 50:25, 51:1, 51:4, 51:16, 51:18, 51:19, 51:21, 52:2, 52:3, 52:17, 52:20, 53:22, 53:23, 53:25, 54:2, 54:5, 54:7, 54:23, 54:24, 55:1, 55:3, 55:24, 57:21, 58:21, 58:22, 59:19, 60:12, 60:14, 61:13, 61:18, 62:7, 62:13, 62:14, 62:15, 62:16, 62:17, 63:9, 63:12, 63:13, 63:22, 64:16, 65:8, 66:3, 66:13, 66:14, 66:15, 66:25, 67:8, 67:14, 68:3, 68:5, 68:6, 68:7, 68:25, 69:13, 69:25, 70:8, 70:9, 70:20, 70:22, 70:23, 71:1, 71:17, 71:19, 71:24, 72:11, 73:2, 73:3, 73:4, 73:5, 73:15, 73:17, 73:20, 74:8, 74:9, 74:20, 74:21, 75:2, 75:10, 75:11, 75:22, 75:23, 75:24, 75:25, 76:1, 76:5, 76:17, 76:18, 76:19, 77:13, 78:5, 78:8, 78:23, 79:15, 79:17, 79:25, 80:9, 81:1, 81:3, 81:5, 81:16, 82:1, 82:24, 83:19, 83:21, 83:22, 84:3, 84:11, 84:14, 84:23, 85:1, 85:9, 85:20, 85:24, 86:1, 86:20, 86:22, 87:11, 87:12, 87:15, 87:20, 87:22, 87:23, 88:17, 88:23, 89:1, 90:13, 90:15, 90:21, 91:3, 91:4

YOUR ^[160] - 3:7, 3:9, 3:13, 4:9, 5:13, 5:14, 5:23, 5:24, 7:7, 7:8, 7:24, 9:2, 9:6, 9:11, 9:15, 9:21, 9:23, 9:25, 10:23, 12:3, 12:10, 12:15, 12:20, 13:11, 13:15, 13:19, 14:2, 14:9, 15:2, 15:8, 15:11, 15:17, 15:23, 16:2, 16:10, 16:23, 17:6, 18:12, 18:18, 19:4, 19:21, 20:18, 21:6, 21:10, 23:23, 23:24, 25:7, 25:13, 25:14, 25:18, 26:9, 26:15, 27:12, 28:1, 28:4, 28:23, 29:6, 29:10, 29:15, 31:6, 31:19, 31:23, 32:16, 32:20, 33:9, 33:14, 33:23, 38:13, 38:21, 38:24, 39:8, 39:12, 39:19, 40:8, 40:14, 41:6, 41:13, 41:20, 41:25, 42:18, 42:23, 45:13, 45:14, 45:18, 46:9, 46:12, 46:18, 46:25, 47:19, 47:22, 48:3, 49:15, 49:16, 50:3, 50:7, 50:11, 51:5, 52:3, 53:9, 54:6, 54:9, 54:17, 56:22, 59:19, 60:3, 60:12, 61:5, 63:14, 63:15, 65:11, 66:4, 66:12, 66:20, 66:21, 67:13, 67:18, 67:20, 68:1, 68:2, 69:12, 69:15, 69:23, 72:1, 74:3, 74:17, 75:2, 75:14, 75:18, 75:25, 76:3, 76:10, 76:13, 76:15, 76:21, 77:4, 77:7, 77:8, 77:13, 77:17, 77:25, 78:7, 79:7, 79:19, 80:20, 80:23, 81:17, 81:21, 81:23, 82:3, 82:8, 85:20, 85:25, 86:8, 87:13, 87:24, 89:7, 89:18, 89:19, 90:25, 91:3

YOUTUBE ^[3] - 35:14, 35:16, 60:10